



TRIAL LAWYERS INC.

C L P
CENTER FOR LEGAL POLICY
AT THE MANHATTAN INSTITUTE

**A REPORT ON THE
LAWSUIT INDUSTRY
IN AMERICA 2003**

A Message from the Director



As director of the Center for Legal Policy at the Manhattan Institute, it is my pleasure to present *Trial Lawyers, Inc.: A Report on the Lawsuit Industry in America 2003*. This report attempts to shed light on the size, scope, and inner workings of an industry poorly understood by the media and the general public. As we shall see, the lawsuit industry today is truly a behemoth, but—unlike the major corporations in our regular market economy—it remains finan-

cially opaque. Whereas public corporations must disclose their financials in 10-Ks according to SEC regulations, trial lawyers practice in private partnerships that, under the guise of attorney-client privilege, have shielded their financials from public scrutiny.

Trial Lawyers, Inc., while not an annual report per se, presents a snapshot of the lawsuit industry as it exists today. The picture is not pretty. Total tort costs today exceed \$200 billion annually, or more than 2% of America's gross domestic product—a significantly higher percentage than in any other developed nation.¹ Moreover, even as the economy has stagnated and the stock market has plunged, the lawsuit industry's revenues have continued to skyrocket: in 2001, the last year for which data are available, U.S. tort costs grew by 14.3%.² Over the last 30 years, tort costs grew at a compound annual rate of 9.1%; by comparison, the U.S. population grew 1.1% annually, the consumer price index grew 5.0% annually, and the gross domestic product grew 7.6% annually during the same period.³

I hasten to emphasize that while our figures on the size of the lawsuit industry are estimates—due to the industry's lack of transparency—those estimates are sparingly conservative. The above statistics were derived in studies conducted by Tillinghast-Towers Perrin that aggregated insured tort costs going to legal defense, plaintiffs, plaintiffs' attorneys, and administrative overhead. Significantly, these estimates *exclude* the tobacco settlements, most contract and securities litigations, and most punitive damages, as well as the substantial fees generated by the legal profession outside the field of tort law (in such areas as corporate and real-estate transactional work, bankruptcy litigation, or trust and estate planning). And our analysis fails to account for many of the perverse side effects of over-litigation, such as reduced investment and innovation and costly protective practices like "defensive medicine."

While many Americans may understand that the lawsuit industry in America has run amok—most people could quote anecdotal examples of silly cases generated by our "lawsuit culture"—the public tends not to appreciate that the litigation industry is nothing but Big Business. Given that 19% of all tort costs go to plaintiffs' attorneys, we can imagine a corporation called Trial Lawyers, Inc. which rakes in *almost \$40 billion per year* in revenues—50% more than Microsoft or Intel and twice those of Coca-Cola.⁴ The lawsuit industry's lack of transparency prevents us from making an accurate profit estimate, but if its margins are as high as we suspect, Trial Lawyers, Inc. might well be the most profitable business in the world.

But is it really accurate to think of Trial Lawyers, Inc. as a "corporation"? While there are thousands of lawyers who don't fit the mold, for the big class action and mass tort attorneys who receive the lion's share of big awards, the answer, increasingly, is yes:

- Although not centrally organized, the plaintiffs' bar tends to be dominated by tort kingpins who carve up their markets—a practice that in a non-litigation context would be called *collusion*, a violation of antitrust law.
- Just as corporations are organized around different "lines of business," plaintiffs' lawyers target different industrial sectors. These include:
 - Traditional profit centers like asbestos, tobacco, pharmaceuticals, and insurance;
 - Potential growth markets like lead paint and mold; and
 - Suits that today seem outrageous, like those against the fast-food industry, but might well be called *new product development*.
- Plaintiffs' lawyers are increasingly sophisticated in targeting their *customer base*; they aggressively and cooperatively solicit potential claimants through the Internet and traditional print, radio, and television media outlets.
- Although the trial bar likes to accuse corporations of having undue influence, the *government relations* and *public relations* arms of Trial Lawyers, Inc. are more powerful and focused than those of any other industry.

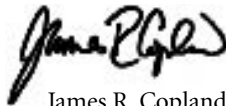
Indeed, the biggest difference between the lawsuit industry and most other industries is that Trial Lawyers, Inc. is in a noncompetitive market and that its takings are necessarily zero-sum, since the industry involves redistribution rather than free exchange.

Trial Lawyers, Inc. does not claim to be comprehensive. As a brief survey of the "litigation groups" listed by the American Trial Lawyers Association on page 23 makes painfully obvious, the lawsuit industry is slowly creeping into almost every aspect of American life. We have only focused on the industry's highlights—or lowlights.

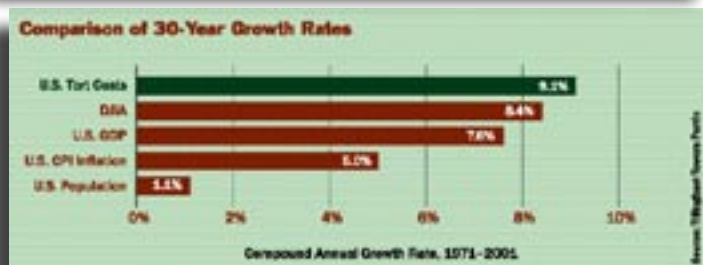
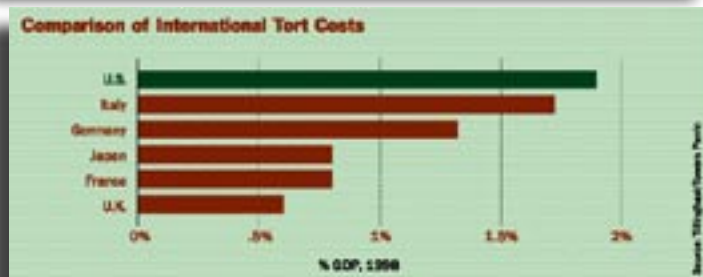
Since its founding in 1986, the Manhattan Institute's Center for

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Legal Policy has been a leader in civil justice reform. Historically, our work has tended to be scholarly in nature. Senior Fellows Peter W. Huber and Walter K. Olson have been called the “intellectual gurus of tort reform” and have each written several influential books on malfunction in our legal system. We have published numerous policy papers by leading academics, judges, and practitioners. So *Trial Lawyers, Inc.* represents something of a departure for us. We are publishing this survey because the litigation industry remains woefully misunderstood by the public, and because we felt it useful to provide a single, readable source of information on the current practices and state of affairs in the litigation industry. We hope that you find *Trial Lawyers, Inc.* useful and informative, if alarming to read.



James R. Copland
Director, Center for Legal Policy
Manhattan Institute for Policy Research



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Visit TrialLawyersInc.com for updated information, pending legislation, and additional resources.

A RECESSION-RESISTANT INDUSTRY

As U.S. economy sputters, Trial Lawyers, Inc. continues to rake it in.

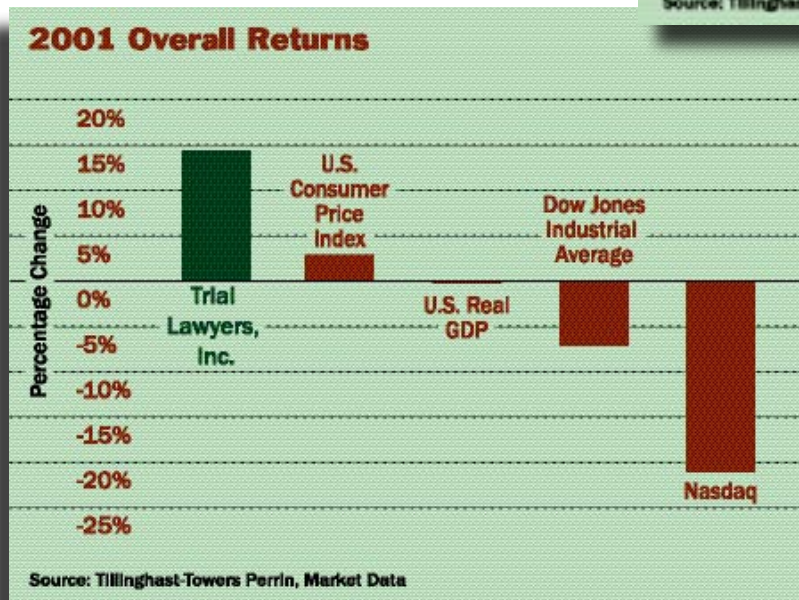
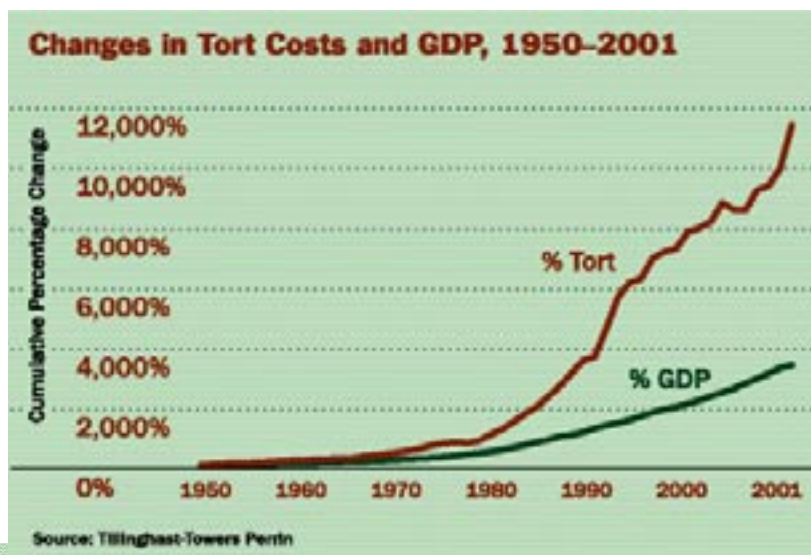
The national economy struggled again in 2002, as the stock market declined more than 20%, retail sales weakened, and businesses put off new investments. But the lawsuit industry proved resilient, and Trial Lawyers, Inc. recorded a banner year.

Led by novel lawsuits making big scores in diverse sectors—reeling in ever-larger class action verdicts, expanding the scope of asbestos litigation, barraging doctors with unprecedented new levels of claims—the lawsuit industry once again proved among the most lucrative business sectors in America. Trial Lawyers, Inc. earned around \$40 billion in revenues last year as settlements and claims reached record proportions.⁶

The Lawsuit Industry

Despite the enormity of that sum, some people may find it strange to describe our civil justice system as an *industry*. After all, the classic conception of a plaintiff's lawyer is an advocate who waits until he is approached by a client with a grievance to be resolved—by negotiation, if possible, and by court action only as a last resort. But that conception is far from the current reality, at least for the big plaintiffs' attorneys running Trial Lawyers, Inc.

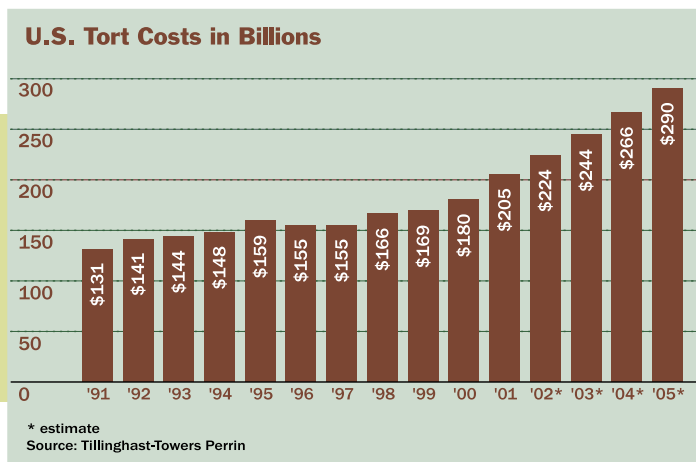
These leading plaintiffs' lawyers run complex, multi-million-dollar organizations that use sophisticated and expensive marketing to pursue clients through every commercial avenue, including the Internet. Like any business expanding its market presence, Trial Lawyers, Inc. uses sales tactics such as no-cost, no-risk offers. As one lawsuit industry-sponsored website declares, "Seek justice NOW by



submitting your class action information online to be considered for a FREE case evaluation!"⁷ These tactics are often designed to launch mass tort cases of the sort that have all but replaced the principle of fair and impartial justice with a new governing principle: winning through intimidation.

Free from the threat of antitrust actions, which have never been brought against the lawsuit industry, the industry is frequently organized into cartels: alliances of firms specialize in particular kinds of lawsuits (e.g., asbestos or medical malpractice), trade information, share briefs, combine clients, and jointly finance actions.⁸ Law professors acting as "new product" consultants and legal magazines acting as a trade press publish articles describing the latest practice areas that are likely to produce "gold" for advocates.⁹ The lawsuit industry even has its own venture capitalists—investors who back firms filing enormous, speculative class action suits with the hope that there will be rich rewards somewhere down the

The overall cost of the tort tax over the next ten years may be almost *triple* the size of the 2001 and 2003 Bush tax cuts *combined*.



road¹⁰—and its own secondary financial market, where shares in future legal fees are bought and sold.¹¹

The Cost of the Tort Tax

While this new and predatory style of law has been a bonanza for Trial Lawyers, Inc., it has been a drain on the American economy and a serious threat to the livelihood and lifestyle of many Americans. America's tort system costs over \$200 billion annually;¹² even assuming that the underlying lawsuits have merit, much of this cost is wasteful and excessive—at least \$87 billion, according to the president's Council of Economic Advisors.¹³

The overall cost of this “tort tax” on our economy over the next ten years will be more than \$3.6 trillion, assuming tort costs increase at their 30-year trend. If tort costs increase at their 2001 pace, the ten-year cost of the tort tax will be over \$4.8 trillion—almost *triple* the size of the 2001 and 2003 Bush tax cuts *combined*.¹⁴

A Dangerous Racket

The impact of predatory litigation is staggering. Asbestos litigation alone has driven 67 companies bankrupt, including many that never made or installed asbestos, costing tens of thousands of jobs and soaking up billions of dollars in potential investment capital.¹⁵ Moreover, the negative social costs of Trial Lawyers, Inc. can be measured in more than just dollars and cents. In 2002, a dozen states experienced medical emergencies because doctors and hospitals could no longer afford malpractice insurance.¹⁶ Women scrambled for doctors to deliver their babies,¹⁷ seriously injured patients had to be airlifted out of some locations because there were no practicing emergency-room physicians available,¹⁸ and hospitals closed maternity wards to protect themselves.¹⁹

And thanks to Trial Lawyers, Inc., the babies that do get delivered are vulnerable to deadly and thoroughly preventable diseases. Why? The litigation industry has used specious theories lacking scientific support to sue vaccine manufacturers for alleged harmful effects caused by vaccines and vaccine preservatives.²⁰ Recognizing that vaccines provide enormous public benefit but inevitably cause side effects in some recipients, Congress in 1986 saved the few remaining vaccine manufacturers from near bankruptcy by shielding them from lawsuits and setting up an alternative no-fault compensation system for those harmed by vaccinations.²¹ The lawsuit industry's recent end run around this legislation, in an age of potential bioterrorism, threatens not only public health but also homeland security.

Trial Lawyers, Inc. and its defenders argue that they are providing a necessary service. They portray themselves as the friend of the “little guy” against incompetent doctors and uncaring corporations. Though this portrayal may have been accurate 30 years ago—and may be today for some attorneys—the kingpins of the lawsuit industry have pursued mass tort and class action suits and turned litigation into a multi-billion-dollar business.

More and more, the industry resembles a racket designed to do little more than advance the incomes and interests of its members—everyone else be damned. In most class action cases, Trial Lawyers, Inc. rakes in huge fees while individual plaintiffs walk away with pennies.²² In medical malpractice cases these days, Trial Lawyers, Inc. often takes between 40% and 70% of the award for its fees and costs.²³ In tobacco litigation, lawyers who never went to trial and never filed an original brief have claimed hundreds of millions of dollars in fees.²⁴ Trial Lawyers, Inc. is truly a lucrative—and dangerous—racket.

THE NEW BILLIONAIRES

Top officers of Trial Lawyers, Inc. haul in sky-high fees for little work.

Once upon a time, the average person blanched at lawyer fees that reached upward of \$500 an hour at many of the best firms. But those high hourly fees are chump change compared with what Trial Lawyers, Inc. is raking in these days. From tobacco settlements to asbestos litigation to class action suits, the industry now boasts fees that can range as high as an astounding \$30,000 an hour, turning some members of Trial Lawyers, Inc. into overnight billionaires and providing the capital to bankroll new lawsuit ventures in new markets.²⁵

The Tobacco Settlements

Regardless of one's view about the merits of the suits, the mega-fees from the 1998 tobacco settlement were nothing but egregious. Some 300 lawyers from 86 firms will pocket as much as \$30 billion over the next 25 years even though, for many of them, the suits posed minimal risk and demanded little effort.²⁶ That staggering sum comes right out of taxpayers' pockets—enough money to hire 750,000 teachers. When it comes to big corporations ripping off the public, no one holds a candle to Trial Lawyers, Inc.

More than \$8 billion will go to a handful of firms that pioneered the first tobacco lawsuits in Mississippi, Florida, and Texas.²⁷ The Florida teams will take home \$3.4 billion, or \$233 million per lawyer.²⁸ That's \$7,716 an hour—assuming they each worked 24 hours a day, seven days a week for three and a half years.²⁹

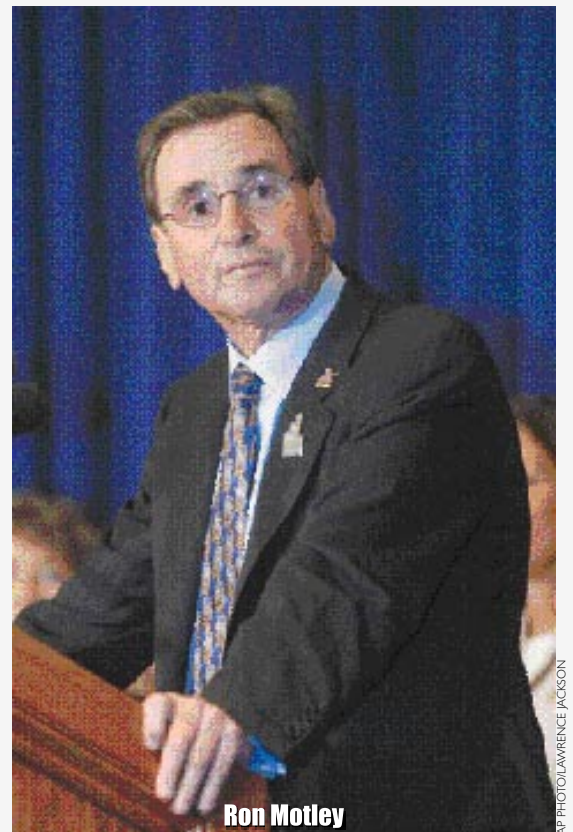
The branch of Trial Lawyers, Inc. hired by the state of Illinois to handle the tobacco settlement took no depositions and never submitted a reckoning of their hours, but pocketed \$121 million—and complained it should have gotten \$400 million.³⁰ Ohio and Michigan also signed on late in the game—after the heavy lifting had already been done—but their lawsuit industry sections still got \$265 million and \$450 million, respectively.³¹

The Michigan award alone amounted to \$22,500 an hour for the Pascagoula, Mississippi, firm of Richard "Dickie" Scruggs and for Ness Motley, the Charleston, South Carolina, firm that was headed by prominent trial attorney Ron Motley.³² Motley, in many ways the "founder" of Trial Lawyers, Inc., helped get the asbestos litigation industry rolling in the 70s. Motley has now moved on to other prey, including lead-paint manufacturers, from whom he hopes to extract more huge sums, along with contingency fees for Trial Lawyers, Inc.³³

The Scruggs firm will collect \$1.4 billion in the tobacco settlement.³⁴ Scruggs, who might be called the president of the tobacco branch of the lawsuit industry, is now gunning for HMOs.³⁵

Baltimore trial lawyer Peter Angelos, who along with Motley and Fred Baron was an asbestos-suit pioneer, claimed a disputed \$1.1 billion in tobacco fees, or one quarter of Maryland's entire award.³⁶ Angelos is now suing cell-phone makers

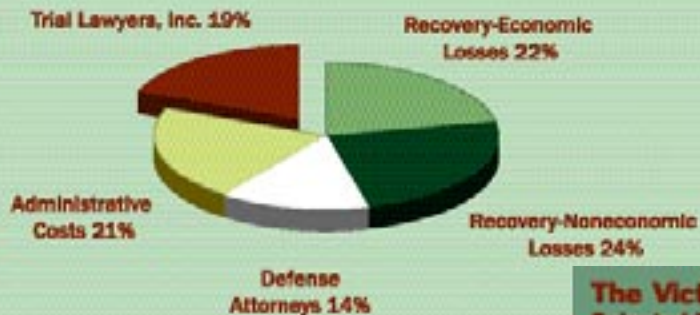
Trial lawyers are now hauling in fees that can range as high as an astounding \$30,000 an hour, turning some plaintiffs' attorneys into overnight billionaires.



Ron Motley

AP PHOTO/LAWRENCE JACKSON

Their Fair Share? Trial Lawyers, Inc. Takes Almost 20% of Total Tort Bill, as Plaintiffs Recover Less than Half



Source: Tillinghast-Towers Perrin

(so far unsuccessfully)³⁷ in addition to passing his time as owner of the Baltimore Orioles.

Who Benefits?

While Trial Lawyers, Inc. makes a fortune from its suits—Scruggs and other top officers are known to fly around in their private jets³⁸—its customers are often left with crumbs. For example, in one Florida class action, lawyers for flight attendants suing the airlines for health problems resulting from secondhand smoke pocketed \$49 million of the \$349 million settlement.³⁹ The flight attendants who brought the suit got nothing unless they filed individual suits and demonstrated that secondhand smoke actually made them sick.

Class members in a lawsuit against Toshiba for defective laptop computers did little better, collecting between \$100 and \$443 in cash and coupons. The take for Trial Lawyers, Inc.: \$148 million.⁴⁰

For the lawsuit industry as a whole, less than half of all dollars actually go to plaintiffs, and less than a quarter of all dollars actually go to compensate plaintiffs' economic damages. As the above examples indicate, in mass tort and class action claims, plaintiffs' awards are typically divided among so many individuals that the only people who meaningfully profit are the plaintiffs' lawyers themselves. And in capturing 19% of a \$200 billion pie, Trial Lawyers, Inc. does handsomely indeed.⁴¹

A TEXAS-SIZE FRAUD

In July, former Texas attorney general Dan Morales pled guilty to two of 12 counts for which he had been indicted in connection with the Texas suits he filed against the tobacco industry.⁴² Morales was accused of trying to funnel hundreds of millions of dollars from the Texas tobacco settlement to a friend and converting campaign contributions to personal use.⁴³ Morales's case demonstrates the grave danger when government officials subcontract out the state's judicial authority to private litigators in Trial Lawyers, Inc.⁴⁴



AP PHOTO

The Victory Cigar Selected Tobacco Fees Awarded to Trial Lawyers, Inc. (as of Dec. 2002)

State	Payments to State	Awards to Lawyers	Law Firms
Mississippi	\$4.1 billion	\$1.4 billion	Richard Scruggs, Ness Motley
Florida	\$13.2 billion	\$3.4 billion	Scruggs, Ness Motley, nine Florida firms
Texas	\$17.365 billion	\$3.299 billion	Scruggs, Ness Motley, five Texas firms
Massachusetts	\$8.3 billion	\$775 million*	Ness Motley, Lieff Cabrerer, four Boston firms
Hawaii	\$1.38 billion	\$90 million*	Ness Motley, Scruggs, four Hawaii firms
Illinois	\$9.3 billion	\$121 million*	Hagens Berman, Lieff Cabrerer, two other firms
Iowa	\$1.9 billion	\$85 million	Ness Motley, six other firms
Louisiana	\$4.6 billion	\$575 million*	Seventeen firms
Kansas	\$1.767 billion	\$54 million*	Ness Motley, Scruggs, two Kansas firms
Ohio	\$10.1 billion	\$265 million*	Ness Motley, Scruggs, five other firms
Oklahoma	\$2 billion	\$250 million*	Ness Motley, Scruggs, four Oklahoma firms
Puerto Rico	\$2.2 billion	\$75 million*	Ness Motley, Scruggs, two local firms
New Mexico	\$1.25 billion	\$24.5 million*	Two local firms
South Carolina	\$2.3 billion	\$82.8 million*	Ness Motley
Utah	\$1 billion	\$64.85 million*	Glaucus Crockett Bendinger & Peterson, Ness Motley
California	\$26 billion	\$637.5 million*	Millberg Weiss, Lieff Cabrerer, two California firms
Michigan	\$8.7 billion	\$450 million*	Ness Motley, Scruggs
New York	\$25 billion	\$625 million*	Ness Motley, Scruggs, Hagens Berman, three local firms

*In litigation. States have sued to reduce lawyers' fees.

Source: The American Lawyer, December 2002

THE REAL CLASS WARFARE

Predatory class action lawsuits drive up consumer costs and reduce innovation.

Class actions were conceived as an expeditious way for people with similar grievances to join in a common suit and get compensated for injuries. But class actions have evolved into a favored means for Trial Lawyers, Inc. to launch predatory assaults on businesses and large institutions, often in the name of clients who don't even know they are being represented.

Despite the absurdity of many of these suits, legitimate companies are hard-pressed to defend themselves because they face thousands or even millions of plaintiffs. As they watch their share prices sink with bad publicity, companies almost always have to settle rather than risk billions of dollars in punitive damages.⁴⁵

Increasingly, the end result is huge fees for the lawsuit industry—an average of over \$1,000 per hour according to *Class Action Reports*⁴⁶—but relatively tiny awards for individual plaintiffs.⁴⁷ For example, in one Texas case, lawyers sued two auto insurers for overbilling because the insurers rounded up premium bills to the next dollar (a practice that was *sanctioned* by the state insurance department) and pocketed almost \$11 million; policyholders got a paltry \$5.50 each.⁴⁸

Sophisticated Customer Targeting

Predatory class action lawsuits are getting significant traction from Trial Lawyers, Inc.'s sophisticated marketing tactics. Websites help trial lawyers troll for class members online: "Justice is now a click away" announces a headline on ClassActionAmerica.com, where for \$8.95 a month consumers can get information on hundreds of class action "opportunities" and sign up to get "the money that you may be due."⁴⁹

Moreover, innovative new financing mechanisms are enabling the lawsuit industry to initiate many more costly suits. Outfits such as ExpertFunding.com and American Asset Finance are the industry's venture capitalists, assembling portfolios and expecting to hit on two or three out of every dozen investments.⁵⁰

A Race to the Bottom

Unlike traditional lawsuits, class actions tend to involve plaintiffs from multiple jurisdictions, if not from all over the nation. Thus, instead of filing suit at the place of residence or injury—as is normally required in the typical single plaintiff lawsuit—Trial Lawyers, Inc. is able to "shop" class action suits in search of the most favorable forum. Quite predictably, the best forum winds up being a state "magnet court" well known for its hospitable treatment of class action lawsuits.

For instance, Madison County, Illinois—recently made famous by handing out a \$10.1 billion verdict against Philip Morris for allegedly insinuating that its "light" cigarettes were "safer"⁵¹—has seen a tremendous upsurge in class action filings in recent years. From 1998 to 2000, class action filings in Madison County increased over 1,800%; over 80% of these suits were brought on behalf of proposed nationwide classes.⁵²

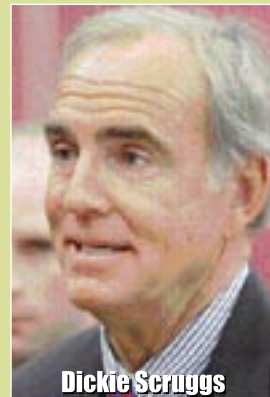
The costs associated with the proliferation of magnet courts go beyond the increased settlement values they generate for often tenuous claims. The fact that major national policy decisions are increasingly being made by county court judges, who are elected by and accountable to only the several thousand residents of their home communities, presents a serious threat to the democratic and federalist principles underlying our constitutional design.

For example, in November 1999, an Illinois judge in a county adjacent to Madison County awarded a national class of plaintiffs \$1.2 billion in a lawsuit against State Farm Insurance.⁵³ State Farm had allegedly been "fraudulent" in authorizing the use of generic parts in

MAGNET COURTS—IN THEIR OWN WORDS

Don't believe us about the "magnet court" phenomenon? Take it from king tobacco lawyer Dickie Scruggs, who had this to say about "magic jurisdictions":

[W]hat I call the "magic jurisdiction," . . . [is] where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected; they're State Court judges; they're popul[ists]. They've got large populations of voters who are in on the deal, they're getting their [piece] in many cases. And so, it's a political force in their jurisdiction, and *it's almost impossible to get a fair trial if you're a defendant in some of these places*. The plaintiff lawyer walks in there and writes the number on the blackboard, and the first juror meets the last one coming out the door with that amount of money. . . . The cases are not won in the courtroom. They're won on the back roads long before the case goes to trial. Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or the law is.⁵⁷



Dickie Scruggs

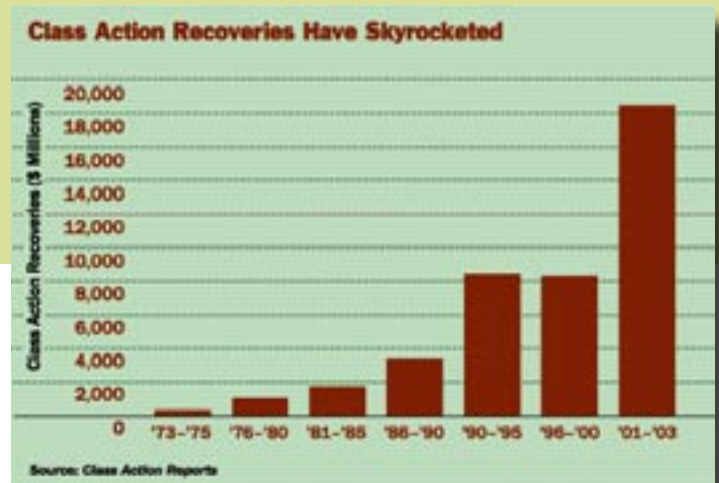
AP PHOTO/ROCELIO SOLIS

Between 1997 and 2000, U.S. firms saw a 300% jump in federal class actions and a 1,000% spike in state class actions filed against them.

automobile repairs, even though using generic parts was not only allowed but actually *required* by some states to reduce insurance costs. The local Illinois judge thus unilaterally overrode the considered policy decisions of many other states' democratically elected officials.⁵⁴

The Costs of Class Action Abuse

Between 1997 and 2000, American corporations reported a 300% increase in federal class actions and a 1,000% spike in state class actions filed against them.⁵⁵ This explosion in class action suits is driving up costs for all consumers. Moreover, the fear of litigation—especially in health care—has kept new products off the market. Lawsuits against IUDs and Norplant rods, for example, are the main reason that only three new contraceptive products have come to market in the U.S. in the last decade, all of them variations on existing technology; not surprisingly, American companies today spend 20 times more on developing new cosmetics than on research into contraceptives.⁵⁶



MARKET IN-SECURITIES

Perhaps nowhere are class action suits more pervasive—or more pernicious—than in the securities industry. Within days of a drop in a company's stock price (usually a high-growth technology stock with a naturally high share-price volatility), Trial Lawyers, Inc. swoops in to file a claim—often lacking any real proof of corporate wrongdoing. Corporations faced with the inevitable, extremely onerous discovery process must defend themselves at great expense; little wonder that such cases typically settle, with one-third of the proceeds going to Trial Lawyers, Inc.⁵⁸

These actions merely redistribute wealth from one class of shareholders to another—with a sizable cut for Trial Lawyers, Inc.—and thus do nothing to curb management abuse.⁵⁹ Some critics have called this system nothing less than “legal extortion”;⁶⁰ a Florida judge rejecting a recent securities class action settlement compared the lawyers in that case to “squeegee boys” who . . . run up to a stopped car, splash soapy water on its perfectly clean windshield and expect payment for the uninvited service of wiping it off.”⁶¹

The plaintiffs' firm in that Florida case was none other than Milberg Weiss Bershad Hynes & Lerach, Trial Lawyers, Inc.'s 800-pound gorilla for securities class actions. Headed by New York's Mel Weiss and San Diego's Bill Lerach, the firm handles the majority of all securities class actions nationally (though a reported rift between Weiss and Lerach has recently led the firm to announce a decision to split its East and West Coast offices).⁶²

Incredibly—though hardly unpredictably—Lerach and his lawsuit industry colleagues have tried to place the blame for the Enron debacle and other corporate implosions on the 1995 Private Securities Litigation Reform Act (PSLRA), which was intended to curb some of the worst abuses of the Trial Lawyers, Inc. squeegee boys.⁶³ But since the empirical evidence shows that securities class actions' settlement values are unrelated to the merits of the underlying cases,⁶⁴ the argument that the securities class action system offers any meaningful deterrent to corporate misconduct is wholly unpersuasive.

Indeed, Lerach's public posturing on the PSLRA notwithstanding, the law actually created barriers to entry for Milberg Weiss's potential competitors.⁶⁵ And despite the PSLRA, the securities gravy train for Trial Lawyers, Inc. rolls on: securities class action filings rose 31 percent in 2002, and Milberg Weiss negotiated three recent settlements of \$300 million or more.⁶⁶



ASBESTOS LITIGATION: FIRE IN THE COURTS

Bankruptcies explode as the asbestos inferno rages on.

Last year, Trial Lawyers, Inc.'s asbestos juggernaut rolled on, racking up multi-million-dollar judgments for claimants with little or no injury and funneling billions of dollars into the pockets of the lawsuit industry. The longest-running mass tort in U.S. history and arguably the most unjust, asbestos litigation has so far bankrupted 67 companies and wrung \$54 billion from helpless corporations.⁶⁷ That's more than the total bill for all Superfund sites, Hurricane Andrew, or the World Trade Center attacks.⁶⁸

Asbestos-Related Bankruptcies, 2000-2002

A-Best

AC&S

A. P. Green Industries

Armstrong World Industries

ARTRA (Synkoloid)

Babcock & Wilcox

Bethlehem Steel

Burns & Roe Enterprises

Eastco Industrial Safety Corp.

E. J. Bartells

Federal Mogul Corp.

G-I Holdings

Harbison-Walker

J. T. Thorpe

Kaiser Aluminum and Chemical

MacArthur Companies

North American Refractory Co.

Owens Corning Fiberglass

Pittsburgh Corning

Pilbrico

Porter Hayden

Shook & Fletcher

Skinner Engine Company

Swan Transportation Corp.

USG Corporation

Washington Group International

W. R. Grace

Source:

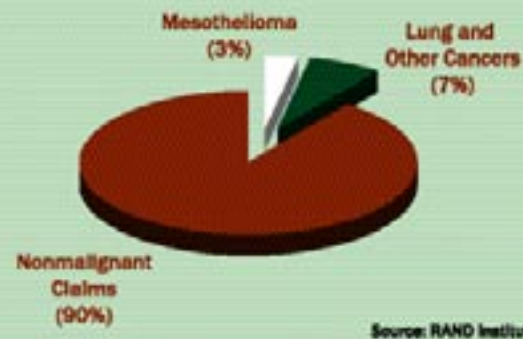
American Academy of Actuaries

An Avalanche of New Claims

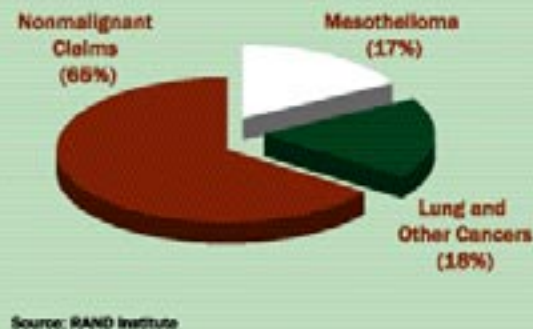
The asbestos litigation nightmare is far from over. By current estimates, some 600,000 claimants, or fewer than a quarter of the potential plaintiffs, have filed suit. Experts are forecasting that total claims could reach 1.3 million to 3.1 million⁶⁹ and that the final price tag could be \$200 billion to \$275 billion.⁷⁰

Driving up the cost are the skyrocketing number of claims—60,000 a year⁷¹—often by people with little or no evidence of injury. Since cases of serious illness—mesothelioma

Nonmalignant Claims Constitute Almost 90% of Asbestos Claims . . .



. . . and Almost Two-thirds of Asbestos Compensation Awards



and other cancers—have remained level at about 4,000 a year, Trial Lawyers, Inc.'s creative marketers have stepped up recruitment of ever more marginally impaired claimants.⁷² Such was the case with six former railroad workers in a Lexington, Mississippi, case decided in October 2001. The jury awarded them \$25 million each, even though not one of them exhibited any form of asbestos-related disease.⁷³

The Search for New Defendants

Even as it files suits for claimants who are not injured, Trial Lawyers, Inc. is supporting its asbestos product line by targeting any solvent company that ever used a product containing asbestos, no matter how minute the amount. To date, 6,000 companies representing 91% of the industries in the United States have been named as defendants.⁷⁴

The industry has targeted companies like AC&S, Inc., a tiny Lancaster, Pennsylvania, insulation contractor being sued in a rural, plaintiff-friendly county in Mississippi.⁷⁵ Not only did AC&S never perform work at any of the sites where the six plaintiffs in the case worked, but it sold few

Predatory lawsuits in cases where there are no observable health problems are surging even as cases of serious disease remain essentially flat.

products that contained asbestos. Those facts did not deter a jury from returning a judgment against the company for nearly \$84 million.⁷⁶ AC&S last year filed for bankruptcy.

Other defendants' connection with asbestos is even more tenuous. Under siege are companies like Chiquita Brands, Sears Roebuck, and 3M, the last of which never made or sold asbestos but is accused of failing to warn users that its masks would not filter out asbestos dust if they were not used properly.⁷⁷ Little more than bystanders, such companies are now bearing the brunt of asbestos litigation, paying out 60% of all claims.

Cases That Never Go to Trial

Faced with a seemingly bottomless pool of claimants, defendants are increasingly electing to settle, abandoning any attempt to verify the claims pouring in or to defend themselves at the risky mass trials in which evidence of illness or fault plays no discernible role. Between 1993 and 2001, only 1,598 out of hundreds of thousands of asbestos claimants have received jury verdicts.⁷⁸

One reason? The horde of asbestos claimants seems to be well coached by Trial Lawyers, Inc. In one noted case, defense attorneys discovered a memo from one of the lawsuit industry's biggest asbestos litigation firms, Baron and Budd, coaching plaintiffs on their testimony. Among other things, the memo urged plaintiffs "to maintain that you NEVER saw any labels on asbestos products that said WARNING or DANGER."⁷⁹

The Asbestos Litigation Victims

The avalanche of new claims has experts questioning whether there will be any money left to pay future claims. Often, nonmalignant claims have so drained the pot of money that seriously ill, more deserving claimants have been left to squabble over the crumbs. The widow of Dale Dahlke, a 53-year-old electrician and cost estimator at the Puget Sound Naval Shipyard who died last year of asbestos-induced mesothelioma, can expect to get about \$150,000 for her husband's affliction, a meager 1% of the \$25 million that each of the Mississippi railroad workers was awarded.⁸⁰ Claimants suffering from deadly mesotheliomas get a scant \$10,000 from the trust set up by Johns-Manville to settle its asbestos claims.⁸¹

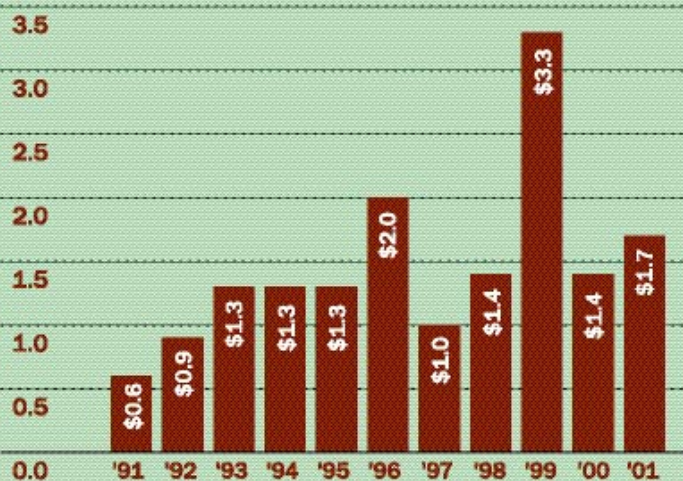
Also left holding the bag are workers and shareholders of bankrupt and besieged companies, who have seen jobs and equity evaporate. Companies bankrupted by asbestos have slashed an estimated 60,000 jobs,⁸² failed to create 128,000 new jobs,⁸³ and forgone an estimated \$10 billion in investment,⁸⁴ according to new studies by RAND and Seabro Associates. Workers' retirement funds, many of which held substantial portions of company stock, have shrunk 25%.⁸⁵ The damage will escalate—if current estimates of the eventual payout prove accurate—to \$33 billion in forgone investment⁸⁶ and 423,000 jobs not created.⁸⁷



Peter Angelos

AP PHOTO/ROBERTO BOREA

Asbestos Losses Paid Out, 1990-2001 in Billions



Source: Insurance Information Institute

AN UNHEALTHY SYSTEM

Doctors flee as skyrocketing malpractice claims drive up insurance costs.

Among Trial Lawyers, Inc.'s most mature markets is that for medical malpractice. Today, soaring jury verdicts are producing outstanding returns for the lawsuit industry even as they drive up insurance costs and make it difficult for patients in some areas to find doctors or hospital care.⁸⁸ Hard-pressed to pay skyrocketing premiums or even to find coverage, doctors are abandoning risky procedures, retiring early, and moving out of tort-friendly states.⁸⁹ A major challenge facing Trial Lawyers, Inc. in the future will be how to maintain this lucrative market as these avoidance tactics spread. But for the moment, business couldn't be better.

Exploding Malpractice Costs

In 2000, the median jury award for malpractice rose 43%, to \$1 million.⁹⁰ By 2001, 52% of all awards exceeded \$1 million.⁹¹ Urban juries in particular are prone to grant mega-awards, and judges, increasingly hard to shock, are less inclined these days to reduce them. In 2002, three of the top ten verdicts in the nation—\$94.5 million, \$91 million, and \$80 million—were returned in malpractice lawsuits. All involved lawsuits in plaintiff-friendly New York City or the suburbs of nearby Long Island.⁹²

No doctor is safe from Trial Lawyers, Inc. A 2002 *Medical Economics* survey of 1,800 physicians found that 58% had been the target of a lawsuit. In some areas of the country, such as the border counties of south Texas, predatory attorneys have swarmed in and recruited impoverished immigrants as claimants.⁹³ Doctors and hospitals in Hidalgo County got hit with 750 claims between 2000 and 2001, compared with 131 in 1999.⁹⁴

The majority of all malpractice suits are weak or bogus, but the huge awards and the millions of dollars required to defend even spurious actions have driven up malpractice insurance rates beyond what many doctors can afford. Between 2000 and 2002, rates

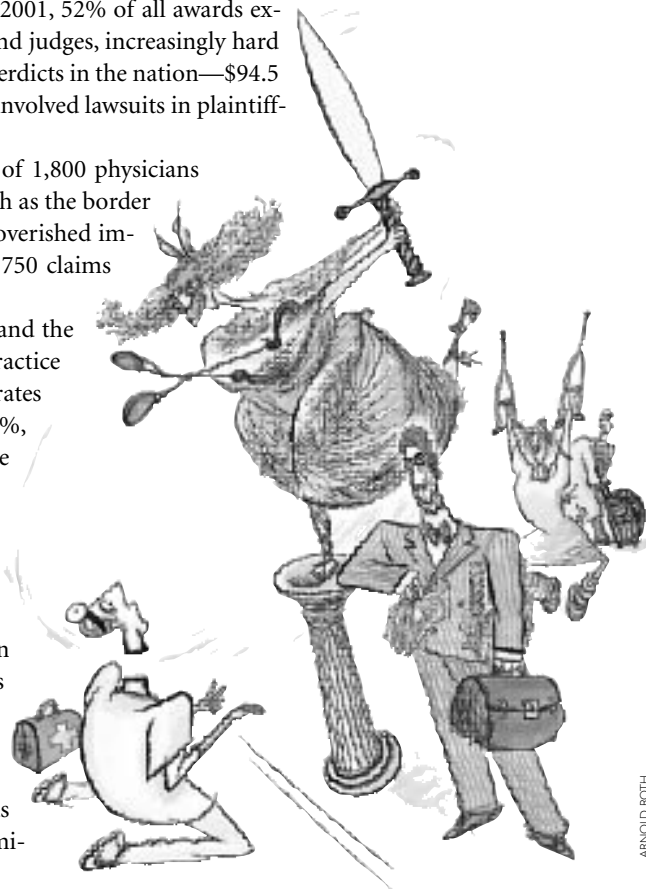
typically rose between 30% and 75%, with even larger increases in some crisis states.⁹⁵

Trial Lawyers, Inc. tries to blame these rising rates on the insurance companies.⁹⁶ But a January 2003 study by Brown Brothers Harriman, which tracked investment returns in malpractice insurance over 25 years *based on the lawsuit industry allies' own data*, refutes that assertion, finding that what has precipitated the crisis is the huge growth in awards and settlements and inadequate premiums to cover them (see graphs).⁹⁷

Malpractice States in Crisis

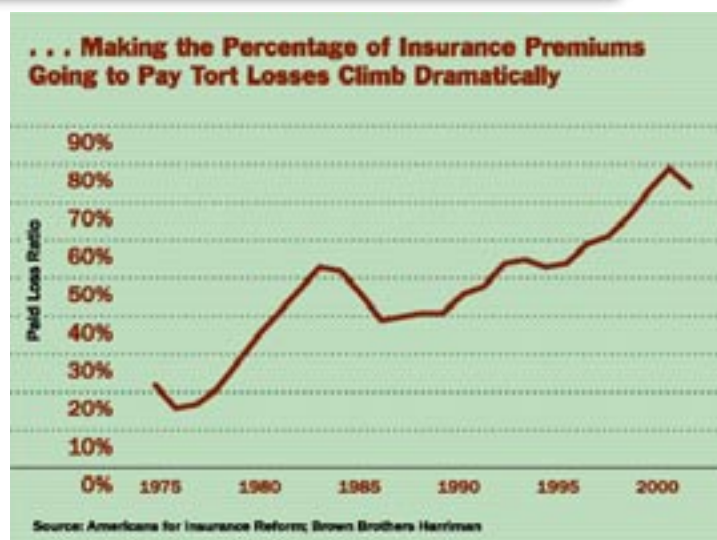
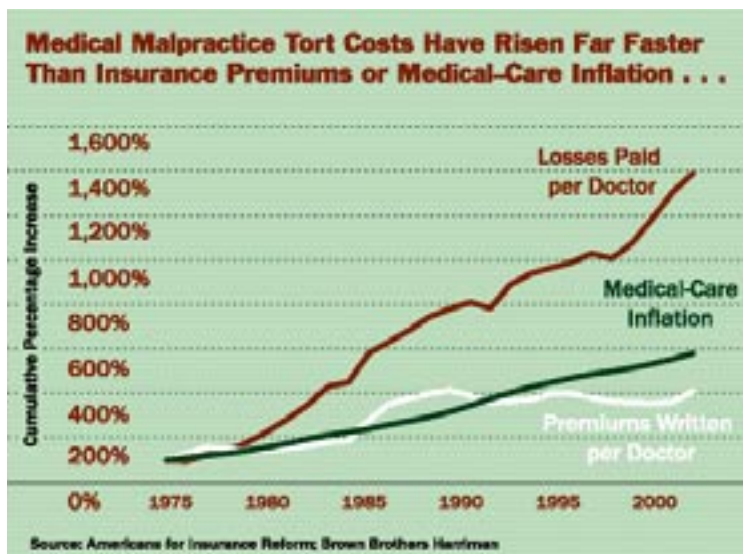
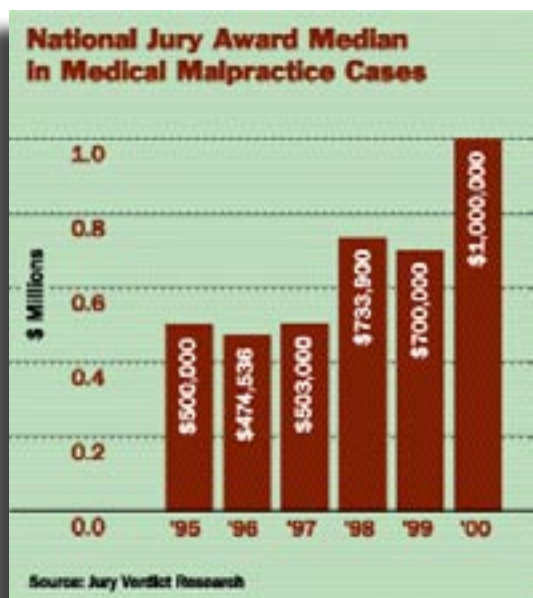
Arkansas
Connecticut
Florida
Georgia
Illinois
Kentucky
Mississippi
Missouri
Nevada
New Jersey
New York
North Carolina
Ohio
Oregon
Pennsylvania
Texas
Washington
West Virginia

Source: American Medical Association



ARNOLD ROTH

Nearly 80% of doctors say they order unnecessary tests and 74% say they make unnecessary referrals to specialists due to fear of being sued.



A Health-Care Crisis

As a result of Trial Lawyers, Inc.'s relentless assault on the medical industry, insurers are abandoning plaintiff havens, leaving thousands of doctors and hospitals scrambling to find coverage.⁹⁸ The country's biggest malpractice insurer, the St. Paul Companies, last year exited the business entirely after incurring nearly \$1 billion in losses.⁹⁹ In Pennsylvania, one of 18 states with out-of-control rates, only two malpractice insurers remain, down from ten only five years ago. In Mississippi, at least 15 insurers have left the market since 1997.¹⁰⁰

Obstetricians and neurosurgeons—high-risk specialties—bear the brunt of Trial Lawyers, Inc.'s skyrocketing verdicts. A child born with cerebral palsy after a difficult birth can command tens of millions of dollars for care over a lifetime; and juries tend to grant such awards even though medical science shows that delivering doctors are almost never to blame. The upshot is that many obstetricians are limiting their practices to gynecology, forcing women in some areas to travel hours for prenatal care and delivery.¹⁰¹ In West Virginia, some community hospitals have shuttered maternity units because local obstetricians can't afford or find coverage.¹⁰² Neurosurgeons are also abandoning malpractice war zones like West Virginia;¹⁰³ stroke patients and head- and spinal-trauma victims who need urgent treatment are helicoptered to Pittsburgh, 70 miles away.

Other high-risk specialists also are finding themselves in the crosshairs of the lawsuit industry. In October 2001, a group of 18 physicians, who performed about 80% of the orthopedic surgeries in Delaware County outside Philadelphia, announced that they would stop doing surgery and answering trauma calls.¹⁰⁴ To protest rising insurance costs driven by predatory lawsuits, surgeons at the University of Nevada Medical Center in Las Vegas quit for ten days last summer, forcing a temporary closing of the medical center's trauma center.¹⁰⁵

Physicians who continue practicing have adjusted their behavior to minimize risk. Nearly 80% of doctors say they order unnecessary tests and 74% say they make unnecessary referrals to specialists.¹⁰⁶ The price tag: an estimated \$60 billion to \$108 billion a year in unnecessary health-care costs.¹⁰⁷ In the meantime, millions go uninsured for lack of affordable health care.

A PARASITIC PLAGUE SPREADS

Trial Lawyers, Inc. makes more and more money off mold despite the lack of scientific evidence.

Like any business, Trial Lawyers, Inc. continues to explore new opportunities with perceived growth potential. Unfortunately, the out-of-control state of our civil justice system means that the number and size of new ventures in litigation is vast indeed. Current expansion opportunities include lawsuits targeting manufacturers of lead paint—even though the industry supported a voluntary standard to eliminate lead pigments in paint in 1955¹⁰⁸—and HMOs, the industry everyone loves to hate.¹⁰⁹ But one of the most curious, and largest, new markets for Trial Lawyers, Inc. involves a ubiquitous little fungus we all know well: mold.¹¹⁰

Mold has of course grown for millions of years, hardly noticed, thriving in water-soaked niches and colonizing dark and wet places. Until recently, insurance adjusters generally handled mold claims only as a result of a covered incident, such as a burst water pipe.¹¹¹ The average mold claim cost several thousand dollars.¹¹² But now under the aggressive actions of the litigation industry, mold has emerged from its dank corners and become a topic for the front pages and the courts. Mold made the big time when trial lawyers started claiming that some forms of mold caused a variety of health problems, creating a much broader scope of liability for insurers and landlords.¹¹³ Common mold has become an uncommon liability problem, driving up the cost of homeowners' insurance and threatening to slow construction in some areas of the country.¹¹⁴ The *American Bar Association Journal* is now predicting that mold could surpass asbestos in case volume and value of awards.¹¹⁵

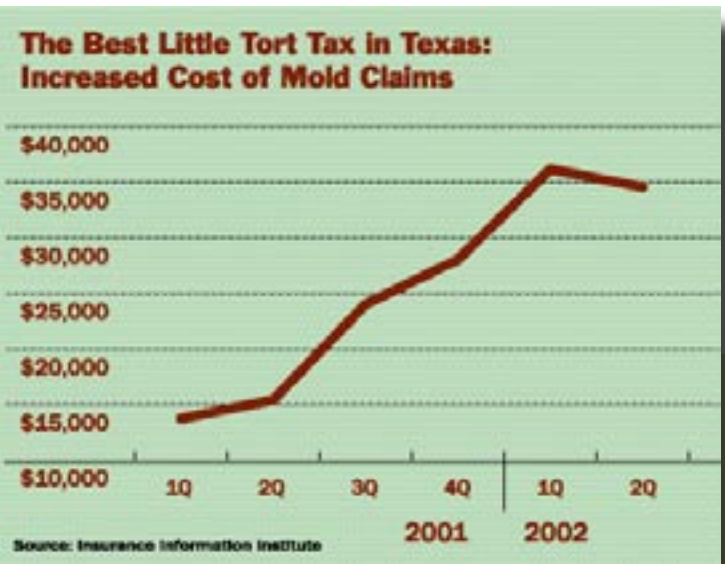
Creating a "Black Gold" Rush

Though it's been pervasive for centuries, mold only recently has been accused of a huge variety of health ailments. Did mold itself become more toxic than before? Scientific evidence suggests not¹¹⁶ (see box on next page), since the flood of new claims encompasses both new and old homes and materials in broad geographic areas.

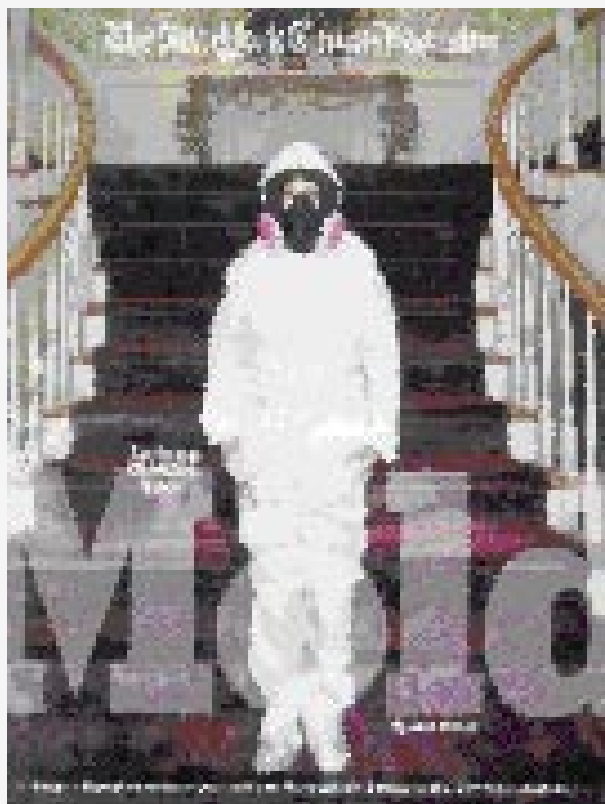
Despite the lack of scientific evidence, successful mold suits are the newest growth sector for Trial Lawyers, Inc. and for a whole industry of consultants who now work around the issue. The *American Bar Association Journal* made the case blatantly when it headlined a recent article on the growth of mold litigation MOLD IS GOLD.¹¹⁷ Law professors use the term in academic papers,¹¹⁸ while consultants advertise their services claiming mold is "black gold." The underside of this aggressive approach to common mold is already evident: in Texas, homeowners working with so-called mold remediation firms were reported to have conspired to "cook" houses, that is, to heat them and flood them with water to produce big insurance claims.¹¹⁹ No doubt they were spurred by increasing reports of big awards.

The Mold Litigation Explosion

The vanguard big-money mold award came from a landmark 1999 Texas lawsuit in which homeowner Melinda Ballard sued her insurer for \$100 million after her family allegedly got sick from mold



The *American Bar Association Journal* is now predicting that mold could surpass asbestos in case volume and value of awards.



contamination.¹²⁰ *The New York Times Magazine* ran photos of workers in hazard suits combing through her mold-infested Texas mansion. In June 2001, a jury awarded Ballard \$32 million, including \$12 million in punitive damages, \$5 million for mental anguish, and nearly \$9 million for attorney fees.¹²¹

Within months, mold lawsuits proliferated, fed by an uncritical media. Television personality Ed McMahon sued for \$20 million, claiming fungus in his home killed his dog;¹²² his case ultimately settled for \$7 million.¹²³ Activist Erin Brockovich went to court over mold in the \$6 million home she bought with proceeds from her hit movie.¹²⁴

Starting in 1999, mold filings in Texas increased sharply—up by 1,300% from the beginning of 2000 to the end of 2001, according to the Insurance Information Institute.¹²⁵ Average mold claims today cost about \$35,000, and many exceed \$100,000.¹²⁶ Through 2001, mold claims had added over \$1 billion in costs to the homeowners-insurance system in Texas alone; that's an annual increase of about \$440 for every insured household in Texas.¹²⁷

Although mold litigation caught fire in warm-weather climates like Texas, California, and Arizona, the litigation frenzy has now gone national. One of the biggest cases of 2002 involved an apartment complex in New York City. At Henry Phipps Plaza South, 400 residents sought class action status for an \$8 billion lawsuit—the largest mold lawsuit to date. The group settled for \$1.2 million.¹²⁸

MOLDY CLAIMS

Exposure to mold causes runny noses, itchy eyes, scratchy throats, and other allergic symptoms in susceptible people. Beyond that, assertions of serious health effects from mold are unproven.¹²⁹

What the litigation industry calls “toxic molds” are uncommon mold strains releasing substances called mycotoxins, which have been asserted to be a cause of significant health ailments such as asthma, pulmonary damage, and memory loss.¹³⁰ Chief among the suspected mold species is *stachybotrys chartarum*, a black mold variety that requires nearly constant moisture to grow.

Despite the assertions by Trial Lawyers, Inc., medical science has yet to show a significant link between toxic mold and the serious health risks it allegedly causes. Acknowledging that individuals with chronic respiratory disease may be prone to more serious negative effects from mold, the U.S. Centers for Disease Control states the following as the current state of science on “toxic” mold: “There are very few case reports that toxic molds (those containing certain mycotoxins) inside homes can cause unique or rare health conditions such as pulmonary hemorrhage or memory loss. These case reports are rare, and a causal link between the presence of the toxic mold and these conditions has not been proven.”¹³¹

Much of the mold panic was fueled by earlier U.S. Centers for Disease Control studies in 1994 and 1997 that initially found an association between exposure to *stachybotrys chartarum* mold and lung damage in a group of infants in Cleveland. In 2000, however, the CDC took the very unusual step of retracting its endorsement of the earlier reports, citing faulty methodology.¹³²



PHOTOS.COM/ARTTODAY, INC.

REGULATION THROUGH LITIGATION

Trial Lawyers, Inc. supplants elected officials and regulators as a fourth branch of government.

Once upon a time, law school graduates could look forward to one of two career paths. Those who hoped to make it rich—or pay down their law school loans—headed off to big law firms, representing deep-pocket clients in typically mundane if complex business cases. Those who retained a sense of idealism and wanted to “help people” or “better the world” left for low-paying but personally fulfilling “public interest” jobs, on behalf of indigent defendants, civil rights causes, and the like.

As Manhattan Institute senior fellow Walter Olson chronicles in *The Rule of Lawyers*, however, the deep pockets of Trial Lawyers, Inc.—especially since the tobacco settlements—have completely changed this equation.¹³³ Today, the fastest way to riches in the legal profession is undoubtedly to become a plaintiffs’ attorney for Trial Lawyers, Inc. And those members of Trial Lawyers, Inc. who want to “change the world” can do just that, as well, since they have amassed so much power that they can drive major policy changes on their own.¹³⁴

As Olson notes, the litigators of Trial Lawyers, Inc. have emerged as a “fourth branch” of government; and the grave danger of this branch is that, unlike the three carefully designed by our constitutional framers, there are essentially no checks and balances on its power.¹³⁵ Whether or not one agrees with the political objectives pursued by Trial Lawyers, Inc., one has to be fearful of the democratic implications of ceding national decision making to an unelected, unaccountable, self-interested industry. As former secretary of labor Robert Reich has noted, “The era of big government may be over, but the era of regulation through litigation has just begun.”¹³⁶

Justice for Hire: The Co-option of Attorneys General

A key to Trial Lawyers, Inc.’s ability to regulate has been its ability to cooperate with, and receive the blessings of, state attorneys general.¹³⁷ State attorneys general typically have broad power to sue on behalf of the state for alleged wrongdoings.¹³⁸ The breakthrough in Trial Lawyers, Inc.’s relentless pursuit of Big Tobacco’s deep pockets came when Dickie Scruggs got the cooperation of Mississippi’s attorney general Mike Moore to go after the tobacco companies in suits to “recoup” state medical expenses due to smoking-related illnesses.¹³⁹ Scruggs had given substantial sums to Moore’s campaign as well as flying him around the state to campaign stops.¹⁴⁰

When the case went national, more states came after tobacco dollars, and Moore and Scruggs conceived the almost unprecedented step of having state attorneys general contract out the cases to Trial Lawyers, Inc. on a contingency-fee basis.¹⁴¹ It mattered little that the theory underlying the states’ cases was rather shaky (both the RAND Corporation and the Congressional Research Service estimated that the external costs of smoking were exceeded by excise taxes on cigarettes).¹⁴² Typically, each state’s case went both to “national” counsel—the originators of the tobacco gambit, such as Scruggs, Motley, and their friends—as well as to “local counsel” from the state in question.¹⁴³

The potential for corruption in such a scenario is vast. For example, Kansas attorney general Carla Stovall hired her former firm, Entz & Chanay, to be the state’s local counsel; not surprisingly, the firm offered her an office and generous contributions for her reelection campaign.¹⁴⁴ Though there has been no evidence of any *quid pro quo* in this or most other cases, the indictment and guilty plea of former Texas attorney general Dan Morales (see box on page 7) shows just how dangerous these arrangements can be.¹⁴⁵

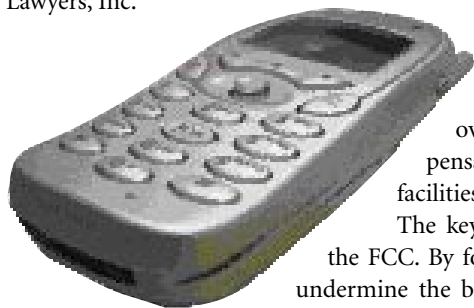
As former secretary of labor Robert Reich has noted, “The era of big government may be over, but the era of regulation through litigation has just begun.”

Emboldened by its success against the tobacco companies, Trial Lawyers, Inc. predictably branched out to tackle new industries it wished to regulate. And, again predictably, attorneys general continued to help them in their cause. When questioned during the tobacco negotiations “whether she intended to go after other industries, such as firearms, high-fat food, and alcohol,” Janet Reno replied that she was “not aware of any other industry” that might present a similar case.¹⁴⁶ Six months later, the Justice Department decided to assist Trial Lawyers, Inc. in suing gun manufacturers.¹⁴⁷



Sorry, Wrong Number: Trial Lawyers, Inc. Takes on Regulated Industries

In cases like tobacco and guns, Trial Lawyers, Inc. has supplanted the legislatures in regulating industries that our democratically elected officials had left alone. Even more dangerous, perhaps, is the increasing tendency of Trial Lawyers, Inc. to regulate through litigation industries that are already heavily regulated by statutorily created administrative agencies. Industries like pharmaceuticals (see box, below) and telecommunications are closely regulated by the Food and Drug Administration and Federal Communications Commission, respectively, but have nevertheless been on the receiving end of a litigious regulatory assault by Trial Lawyers, Inc.



Indicative of the assault on regulated industries is the antitrust suit against Verizon launched by Curtis V. Trinko, LLP, a securities class action firm, on behalf of East Coast customers.¹⁴⁸ Under an FCC consent decree, Verizon paid competitive local exchange carriers \$10 million over a billing glitch.¹⁴⁹ Trinko’s lawsuit alleges that all Verizon customers are also entitled to compensation under the antitrust laws, under a novel interpretation of what is known as the “essential facilities” doctrine.¹⁵⁰

The key point here is that such a lawsuit runs squarely against the regulatory authorities vested in the FCC. By forcing Verizon and other local carriers to subsidize their competition, the lawsuits threaten to undermine the balance struck by Congress in the Federal Communications Act of 1996.¹⁵¹ And as noted by John Rogovin, the FCC’s acting general counsel, “It’s difficult to imagine how a private case getting into this ‘essential facilities’ issue . . . is not going to bump up quite seriously into what the commission is doing.”¹⁵² *Trinko* is now pending before the U.S. Supreme Court; only time will tell how far Trial Lawyers, Inc.’s power to regulate by litigation will extend.

A DANGEROUS PRESCRIPTION

Pharmaceuticals are heavily regulated by the Food and Drug Administration under Congress’s grant of authority.¹⁵³ For better or worse, all drugs must go through lengthy and onerous approval processes before being introduced into the market.¹⁵⁴ Yet such strict regulatory oversight has not stopped Trial Lawyers, Inc. from suing drug manufacturers over alleged side effects and “defects.” From Bendectin to Fen-Phen, from Norplant to IUDs, Trial Lawyers, Inc.’s pursuit of deep-pocket pharmaceutical manufacturers has been relentless; and often the “science” underlying such claims has been junk.¹⁵⁵



Some of the costs of such litigation are obvious: raising consumer prices, reducing research into new drugs, and forcing manufacturers to withdraw existing effective drugs from the market. The onslaught of cases against birth control devices such as Norplant and IUDs has led to a virtual cessation of research into new contraceptives and drugs or devices to facilitate women’s reproductive health.¹⁵⁶

But particularly insidious is the pharmaceutical suits’ usurping of FDA authority. Every jury award that a drug was too “unsafe” to be introduced into the market directly undermines the FDA’s congressional mandate to approve which drugs are safe and effective enough to be sold. The FDA has intervened in recent court actions to explain how judicial review of FDA-approved labeling undermines FDA oversight of drugs and patient health.¹⁵⁷

BURGERS: THE NEXT CASH COW?

Trial Lawyers, Inc. continues product development by making litigation against the fast-food industry its *suit du jour*.

Many people scoffed when 270-pound Caesar Barber filed a lawsuit against McDonald's and three other fast-food companies in July 2002 accusing them of selling high-fat meals that made him obese.¹⁵⁸ Blaming restaurants for making one fat seems, well, fatuous. And when a judge dismissed Barber's lawsuit, it seemed to be proof that such cases aren't based on weighty evidence.¹⁵⁹

But it would be a mistake to think the obesity lawsuits are no longer on the menu. Barber's was just the first course in what is emerging as the latest strategic initiative by Trial Lawyers, Inc., which aims to feast on the fast-food industry. The strategy is clear: attempt to hold food firms responsible for a portion of the public health costs related to obesity¹⁶⁰—just as the tobacco industry was eventually forced to fork over the expense of tobacco-related illnesses—and collect big fees for cooking up whopper suits.

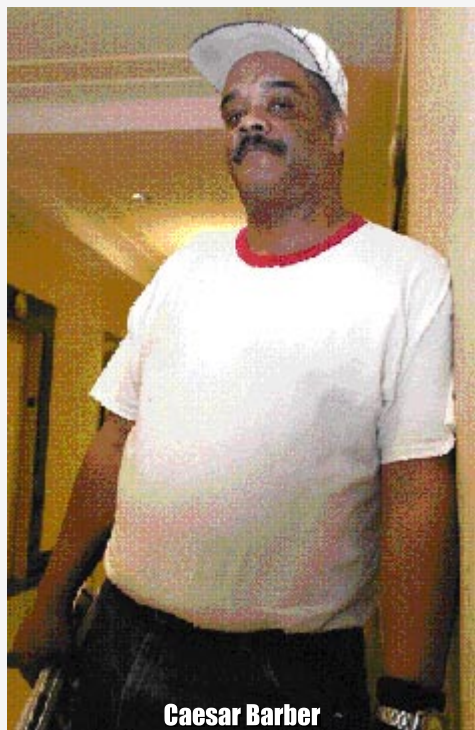
A Research and Development Strategy

For Trial Lawyers, Inc., a few early unsuccessful cases represent nothing more than new product development costs: in tobacco litigation, lawyers fought unsuccessfully in court for years before finally working out the kinks that stood in the way of big-fee verdicts. Such early defeats are merely up-front investments, much like research-and-development expenses for other industries.¹⁶¹ When potential revenues are massive—consider the \$30-billion-plus contingency fees extracted from Big Tobacco—Trial Lawyers, Inc. has every incentive to invest heavily in such speculation.

Trial Lawyers, Inc.'s initial line of attack is to go after food companies that make allegedly deceptive claims about fat, calories, and nutrition.

That strategy was used in a 2002 class action filing against the makers of Pirate's Booty cheese snacks, which accused them of presenting inaccurate figures on fat content.¹⁶²

A second line of attack is accusing companies like McDonald's of misleading people to believe their food is healthy. In his January dismissal of fast-food claims brought in the Southern District of New York, Judge Robert Sweet rejected claims of deception but seemed to leave on the plate the possibility of revisiting whether McDonald's was negligent, if by processing its food McDonald's created a more dangerous product.¹⁶³ In early September, Judge Sweet again dismissed the plaintiffs' restated claim, but it is reasonable to expect Trial Lawyers, Inc. to keep trying to Super Size its claim.¹⁶⁴



Caesar Barber

By forcing food suppliers to foot the bill for a portion of the social cost of diseases related to severe obesity, the lawsuit industry could again pocket tens of billions.

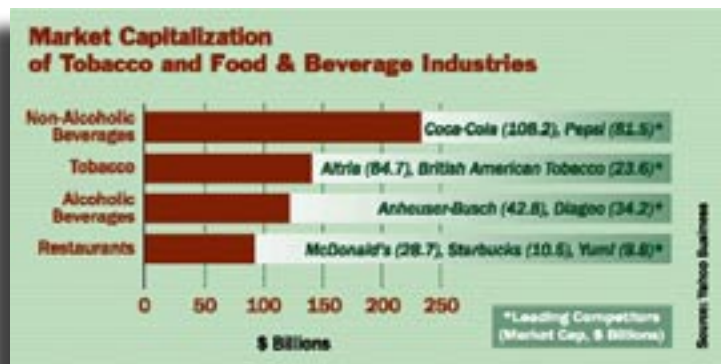
A Public Opinion Crusade

As in the tobacco cases, Trial Lawyers, Inc. is banking on a growing din from public health advocacy groups gradually to swing public opinion against the food companies. Longtime trial-lawyer ally Ralph Nader, for instance, has already called a McDonald's hamburger "a weapon of mass destruction."¹⁶⁵ The Center for Science in the Public Interest, an advocacy group started by former lawyers associated with Nader, has been promoting ideas such as imposing a "fat tax" on sodas and greasy snacks to help cover the cost of epidemic levels of obesity and mandating that McDonald's post calorie counts for each item on its menu boards.¹⁶⁶ Perhaps unsurprisingly, such "public health" advocates make little effort to encourage individuals to take personal responsibility through improved exercise and eating habits.

Golden Arches: A Pot of Gold?

The eventual goal for Trial Lawyers, Inc., however, is to force food suppliers to foot the bill for a portion of the social cost of diseases related to severe obesity—including type-two diabetes, sclerotic arteries, heart attacks, and strokes—while taking the lion's share of the payout themselves.¹⁶⁷ Under its typical contingency-fee arrangements, the lawsuit industry could again pocket tens of billions.

The success of the fast-food suits may hinge on the ability of trial lawyers to persuade state attorneys general to begin filing suit to recover obesity-related medical costs from food companies. Similar actions proved to be a breakthrough in the tobacco lawsuits. And if the tobacco settlements are any guide, state lawmakers faced with budget crunches may be all too willing to go after the Golden Arches' pot of gold—and expand Trial Lawyers, Inc.'s bottom line in the process.



WHAT'S NEXT IN NEW PRODUCT DEVELOPMENT?

•**Hookers v. Hollywood.** A group claiming to represent prostitutes, drug abusers, and panhandlers wrote to several Hollywood film companies in August 2002 seeking cash compensation for depriving them of business opportunities and displacing them from neighborhoods during the filming of various movies.¹⁶⁸

•**Like a Cigarette Shouldn't.** A former Winston cigarette model filed a \$65 million lawsuit against the cigarette maker for allegedly damaging his reputation. The model, who appeared in print and TV ads in the 1970s, claims he has suffered emotional pain as a result of the use of his image to influence others to smoke.¹⁶⁹

•**Better Off Dead.** A spate of "wrongful birth" lawsuits is being filed and, in several cases, won. Parents testify in court that they would have aborted their child had they been properly informed of genetic risks, accuse the doctors of malpractice, and demand expenses for the care of the child. A law firm in New Jersey claims it has won awards of \$950,000 to \$2 million for the plaintiffs in each of four such cases over the last two years.¹⁷⁰

•**Most Valuable Lawsuit.** Proving that litigation madness isn't limited to the U.S. alone, a father in New Brunswick, Canada, is suing an amateur hockey league for \$300,000 after his son failed to win the league's Most Valuable Player award. The lawsuit seeks psychological and punitive damages, and it demands that the trophy be taken away from the player to whom it was awarded and given to his son.¹⁷¹

•**A Matter of Fax.** Two class action lawsuits filed in California in August of 2002 are seeking \$2.2 trillion in damages against alleged junk-fax distributor Fax.com and its business partners. The claim amounts to \$1,500 for each unwanted piece of paper sent by Fax.com over a period of four years. Under general fee guidelines, if the plaintiffs are successful in winning the full amount, the lawsuit industry might collect as much as \$700 billion—the value of the entire GDP of China.¹⁷²

•**Monkey Business.** A group of legal activists, including Harvard Law professor Laurence Tribe,¹⁷³ is pressing to grant chimpanzees legal standing in court, similar to that of children.¹⁷⁴ If the group has its way, a chimpanzee theoretically could win an injunction against a medical researcher or a roadside zoo.

THE BEST FRIENDS MONEY CAN BUY

Trial Lawyers, Inc. floods the political process with cash.



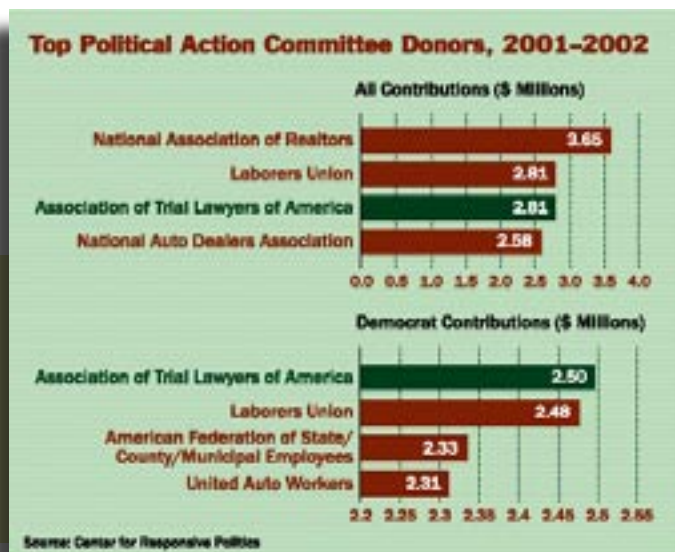
Trial Lawyers, Inc. has poured funds into the coffers of its political allies to gain unprecedented influence at the national and state levels. The Association of Trial Lawyers of America—the “home office” of Trial Lawyers, Inc.—routinely ranks among the top five PACs in federal campaign donations, leaning strongly to Democrats.¹⁷⁵ In 2002, ATLA was the third most generous PAC, contributing \$2.8 million;¹⁷⁶ 89% of that money went to Democrats, making ATLA the largest PAC contributor to the Democratic party (see graph).¹⁷⁷

ATLA’s PAC contributions are merely the tip of the iceberg when it comes to Trial Lawyers, Inc.’s political influence. Through individual and soft money contributions, as well as PAC donations, the lawsuit industry has surpassed all others in political giving in every electoral cycle since 1990 (see graph on next page).¹⁷⁸ Several leaders of Trial Lawyers, Inc. are regulars on top-donor lists: in the 2002 electoral cycle, members of Williams & Bailey, one of the largest personal-injury firms in Texas, gave \$2.4 million to federal campaigns; securities class action giant Milberg Weiss gave \$1.4 million; Baron & Budd, headed by former ATLA president and asbestos class action lawyer Fred Baron, accounted for \$1.1 million; and prominent asbestos and tobacco litigator Peter Angelos’s firm gave \$1.9 million.¹⁷⁹ Each of these firms’ members gave at least 99% of their contributions to Democrats.¹⁸⁰ All told, the litigation industry has contributed \$470 million to federal campaigns since 1990.¹⁸¹

The Lawsuit Industry’s “Favorite Son”

Epitomizing Trial Lawyers, Inc.’s drive for political influence is the career of U.S. Senator John Edwards (D-NC), a former personal-injury lawyer. Campaigning for the Senate in 1998, Edwards received more than half his total outside contributions from his friends in the lawsuit industry.¹⁸² Edwards has in turn enthusiastically supported key provisions backed by Trial Lawyers, Inc., including helping to defeat proposed limitations on personal-injury lawsuits in the event of a terrorist attack and seeking to make it easier to sue health maintenance organizations.¹⁸³

Although Edwards’s 2004 presidential run seems thus far to be floundering, his campaign certainly opened eyes to the political power of Trial Lawyers, Inc.: by the end of the first quarter of 2003, Edwards topped all 2004 Democratic presidential hopefuls in fund-raising—with almost two-thirds of the \$7.4 million he had raised coming from trial lawyers, their families, and their staffs.¹⁸⁴ As noted by the *Wall Street Journal*, “even political professionals seem[ed] stunned by the degree to which his candidacy ha[d] become a wholly owned financial subsidiary of the national tort bar.”¹⁸⁵



Justice for Sale

At the same time, and with less fanfare, Trial Lawyers, Inc. has ratcheted up its longstanding activity in financing state judicial races. Lawyers traditionally have been the largest group of givers to state supreme court judicial races, and these formerly sleepy races have become the new hot spots.¹⁸⁶ Texas is historically notorious for high-spending judicial campaigns; as long ago as 1980, Texas became the first state to have a statewide

All told, the litigation industry has contributed a staggering \$470 million to federal campaigns since 1990.

judicial race cost \$1 million.¹⁸⁷ In Madison County, Illinois, a “magnet court” jurisdiction (see box on page 8), over 75% of all recent judicial race contributions came from Trial Lawyers, Inc.¹⁸⁸ Underwriting such campaigns has been a key tactic in preserving friendly judicial philosophies and rewarding judges congenial to expansive tort laws. This notion of “justice for sale” is a serious threat to judicial independence and the rule of law.



CONSUMMATE ALLIES

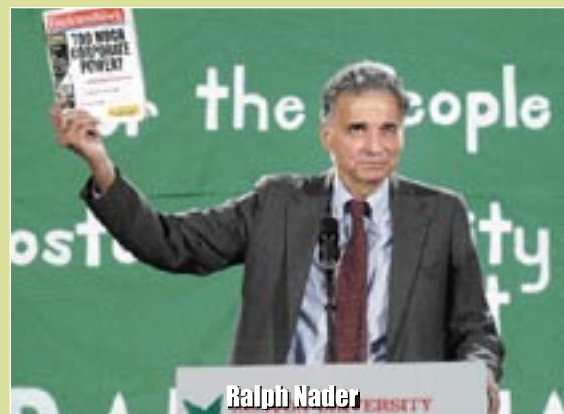
While Trial Lawyers, Inc. has used its huge political contributions to buy influence in Washington and in state capitals, its operators continue to rely on alliances with so-called consumer groups to gain favorable media attention and win the public relations battle on many tort issues. By collaborating with advocacy organizations and even creating some of its own groups, Trial Lawyers, Inc. has successfully portrayed itself as a defender of the little guy—obscuring the huge revenues the industry reaps from expanding civil justice activity, ultimately at the expense of ordinary citizens.

The model for this symbiotic relationship is between Trial Lawyers, Inc. and consumer advocate Ralph Nader. This strategic alliance goes back decades, to at least the time that Nader published his article and book attacking the safety of the Corvair automobile,¹⁸⁹ and Nader institutionalized his allegiance by founding various nonprofit organizations such as the Center for Study of Responsive Law and Public Citizen. Over the years, these organizations supported Trial Lawyers, Inc. on issues ranging from resisting changes in California’s auto-insurance system (changes that brought down insurance rates for ordinary citizens) to fighting against securities-litigation reform (which kept Trial Lawyers, Inc. from decimating the value of highly volatile stocks). A bevy of prominent members of Trial Lawyers, Inc. told *Forbes* magazine that they contributed heavily to Nader groups over the years and considered the consumer advocate’s support crucial in drumming up favorable publicity for their suits.¹⁹⁰

Not content merely to have such groups as their allies, Trial Lawyers, Inc. has directly funded its own advocacy organizations that present themselves as unbiased allies of Joe Q. Public. One startling example of this practice comes from New York, where the state’s Trial Lawyers Association created the Alliance for Consumer Rights to lobby as a consumer group for legislation advantageous to trial lawyers.¹⁹¹ Over the years, Trial Lawyers, Inc. has frequently cited research by the Alliance in editorials and op-ed pieces in support of its positions, conveniently neglecting to mention that this group is sponsored by Trial Lawyers, Inc.’s local affiliate and actually operates out of the New York State Trial Lawyers Association headquarters.¹⁹²

Trial Lawyers, Inc. has also established its own foundations to support “consumer advocacy” at the national level. In 1986, members of the American Trial Lawyers Association and several activists founded the Civil Justice Foundation, whose mission is to strengthen connections between Trial Lawyers, Inc. and consumer groups.¹⁹³ The foundation has awarded more than \$1 million to dozens of consumer organizations,¹⁹⁴ which often have direct but unobvious links to Trial Lawyers, Inc. For example, one foundation grant recipient, Citizens for Safe and Reliable Highways, lists its goal as improved truck and vehicle safety,¹⁹⁵ yet eight out of nine of the sponsors listed on the group’s website are trial law firms specializing in suing for damages on behalf of victims of motor-vehicle accidents.¹⁹⁶

Finally, Trial Lawyers, Inc. also has a presence in research and academic institutions. Since 1956, ATLA has been the quiet sponsor of the Roscoe Pound Institute, a think tank named after the former dean of Harvard Law School. It publishes research, offers scholarships, and sponsors conferences on trial law.¹⁹⁷



GETTY IMAGES/DARREN MCCOLLISTER/NEWSPIKERS

MOTLEY'S CREW

Top lawyers dominate the headlines and earnings of Trial Lawyers, Inc.

Although the litigation industry has no “organizational structure” like an actual corporation, leading plaintiffs’ attorneys tend to dominate lines of business to such a degree that they might indeed be deemed “division presidents.” Thus, the individuals below in a very real sense constitute the “leadership team” for Trial Lawyers, Inc.



Ron Motley

Founder and Chairman

A noted trial attorney, Motley led the asbestos charge in the 70s, reaped hundreds of millions in the tobacco settlements, and now takes on lead paint, hoping to score billions more.¹⁹⁸

AP PHOTO/PAULA ILLINGWORTH

Dickie Scruggs

President, Tobacco

Trent Lott’s brother-in-law raked in nearly a billion as the chief tobacco settlement negotiator; now he goes after health maintenance organizations.¹⁹⁹

AP PHOTO/ROGELIO SOLIS



Peter Angelos

Co-President, Asbestos

Angelos, along with Motley and **Fred Baron**, was one of the earliest asbestos warriors; he’s recently sued cell-phone manufacturers.²⁰⁰

AP PHOTO

Mel Weiss

Co-President, Class Actions (Securities)

Having never met a stock-price drop they didn’t like, Weiss and erstwhile partner **Bill Lerach** recently extracted three mega-settlements worth over \$300 million each.²⁰¹

AP PHOTO/KHUE BUI



Elizabeth Cabraser

President, Class Actions (General)

Leading class action lawsuits against industries from pharmaceuticals to insurance, Cabraser has extracted billions for Trial Lawyers, Inc., including in the infamous breast-implant case.²⁰²

SAN FRANCISCO CHRONICLE/LACY ATKINS

John Edwards

President, Government Relations

After making millions as a personal-injury lawyer, Edwards has turned his attention to the Senate with an eye toward the White House —mostly funded by Trial Lawyers, Inc.²⁰³

GETTY IMAGES/KARIN COOPER/FACE THE NATION



Ralph Nader

Co-President, Public Relations

Long the best friend of the plaintiffs’ bar,²⁰⁴ Nader has recently pursued presidential ambitions of his own in advancing his crusade against American business.

GETTY IMAGES/MICHAEL SMITH/NEWSMAKERS

Joan Claybrook

Co-President, Public Relations

Longtime Nader ally Claybrook has headed Public Citizen since 1982 and has emerged as Trial Lawyers, Inc.’s *de facto* public voice.²⁰⁵

AP PHOTO/TERU IWASAKI



BUSINESS SUMMARY

Facing virtually no barriers to entry, Trial Lawyers, Inc. continues to leverage its effective business model (see graphic) to expand rapidly into new markets. Increasingly, it is difficult to find an area of commerce, or indeed an area of life, beyond the lawsuit industry's reach. Exemplifying the breadth of markets under siege by Trial Lawyers, Inc. is the list of "litigation groups" published on the American Trial Lawyers Association's own website, shown below.



LINES OF BUSINESS

- Access-Disability Discrimination
- AIDS
- Attorneys Information Exchange Group, Inc. (AIEG)
- Automatic Doors
- Avandia
- Bad Faith Insurance
- Baycol
- Benzene/Leukemia
- Birth Defects
- Birth Trauma
- Breast Cancer
- Carbon Monoxide
- Casino Gaming
- CCA Pressure-Treated Wood
- Child Sex Abuse
- Clinical Trials
- Complex Regional Pain Syndrome ("RSD")
- Construction Defects-Property Damages (Residential and Commercial Properties)
- Construction Site Accidents
- Construction Site Accidents Subgroup: Nailguns
- Cox-2 Inhibitors (Arthritis Drugs, primarily Celebrex and Vioxx)
- Crane and Aerial Lift Injury
- Daubert
- Diet Products: Fen-Phen
- Electrical Accidents
- Ephedra
- ERISA/Employee Benefits
- Firearms and Ammunition
- Firefighters & EMS Hearing Loss
- Funeral Services
- Gas Cans
- Gas Fire & Explosions
- Health Care & Disability
- Healthcare Management Organization
- Herbicides & Pesticides
- Herbicides & Pesticides: (Incl. Dioxin & PCBs)
- Herbicides & Pesticides: Subgroup: Allercare
- Inadequate Security
- Inadequate Security Subgroup: Walmart Task Force
- Interstate Trucking
- Laparoscopy
- Laser Eye Surgery Malpractice
- Latex Allergy
- Lead Paint
- Liquor Liability
- Lotronex
- Low Impact Collision
- Mandatory Arbitration
- Medical Negligence Information Exchange Group
- Meridia
- Methyl Tertiary Butyl Ether (MTBE)
- Mining & Oil Field Products and Accidents
- Nursing Homes
- Orthopedic Implant Devices (Non-Sulzer)
- OxyContin
- Paxil
- Pharmacy Liability
- Phenylpropanolamine (PPA)
- Propulsid
- Qui Tam
- Railroad/Highway Crossing & Derailment
- Rezulin
- Stadol
- Steroids
- Sudden Acceleration/ Transmissions
- Sulzer
- Tap Water Burns
- Tire
- Tobacco Products
- Toxic Mold
- Toys and Recreational Equipment
- Traumatic Brain Injuries
- Truck Underride
- Vaccines
- Workplace Injury

IS REFORM POSSIBLE?

Efforts to contain Trial Lawyers, Inc. continue.

Since 1975, lawsuits have cost the U.S. economy almost \$3 trillion (see chart on next page), and the tab keeps rising. Is there anything that can stem the growth of Trial Lawyers, Inc.? Unfortunately, change won't be easy: the huge fees the lawsuit industry now accumulates not only have served as capital for new litigious ventures but also have made Trial Lawyers, Inc. the most powerful lobbying group and political funder in America.

Nevertheless, the Bush administration has set its sights on a series of tort reforms targeting the core business lines for Trial Lawyers, Inc.—class actions, asbestos, and medical malpractice (see box).²⁰⁷ At the state level, various lawmakers have advanced legislation to control skyrocketing noneconomic- and punitive-damages verdicts and to modify rules that permit some defendants to assume a share of damages grossly disproportionate to their share of liability.²⁰⁸ And other industries have begun to challenge Trial Lawyers, Inc.'s historical grip on state judicial elections.²⁰⁹

Many judges, too, see the need to rein in the lawsuit industry's worst excesses. In its landmark *Campbell v. State Farm* decision in April, the Supreme Court put a constitutional limit on a jury's ability to set punitive damages at an extreme multiple of actual damages.²¹⁰ And while courts have traditionally been reluctant to enforce state codes of ethics prohibiting excessive fees,²¹¹ judges may finally be cracking down in the wake of the outrageous tobacco settlements: New York State judge Nicholas Figueroa recently threw out as excessive a \$1.3 billion claim by the Castano group for work allegedly done on the California tobacco settlement.²¹²

Only time will tell whether these promising steps signal an end to the worst abuses of America's lawsuit culture, or whether they are anomalies bucking the trend of the litigation industry's continuing growth. Will the public come to acknowledge the threat posed by the litigation industry's size, influence, and lack of transparency? Will policymakers and judges have the foresight and will to act in the public interest? One thing is certain: our nation's future economic health depends on affirmative answers to these questions—on Americans standing up to the rapacious behemoth that is Trial Lawyers, Inc.

KEY FEDERAL REFORM INITIATIVES

Class Actions

The fight for class action reform has been a largely uphill battle, since tightening down on one state's "magnet court" merely sends Trial Lawyers, Inc. scrambling for another favorable venue. For instance, after Alabama's infamous tort system was finally reformed in 1999,²¹³ the lawsuit industry simply relocated to Illinois, Mississippi, and West Virginia.²¹⁴

The Class Action Fairness Act currently pending before Congress seeks to address this issue of venue shopping by removing to federal court any large national class action cases.²¹⁵ At the time this publication went to press, the Senate was expected to take up the bill imminently; passage of the act could be the critical first step in containing the class action menace.

Asbestos

The key players in Washington continue to haggle over potential solutions to the asbestos mess. Although no workable legislation has yet emerged, the outlines of reform include establishing a "trust fund" to pay asbestos claimants, setting defined medical standards for asbestos claims, and addressing the problems of forum shopping and legal fees.²¹⁶ Since support for asbestos reform is broad, the outlook for reform of some kind remains hopeful. Asbestos litigation reform would add certainty to the marketplace and could save billions of dollars.²¹⁷ The downside is that a multi-year trust fund might serve both to legitimate spurious claims and to provide a sizable, definite funding stream for yet more ventures by Trial Lawyers, Inc.

Medical Malpractice

On July 9, Democrats in the Senate voted unanimously to defeat President Bush's proposed medical liability reform, the HEALTH Act of 2003 (Senators Jeffords [I-VT], Graham [R-SC], and Shelby [R-AL] also voted against the bill).²¹⁸ The HEALTH Act would cap noneconomic damages in medical malpractice suits at \$250,000, establish time limits for bringing malpractice suits, and preclude "double-dipping" by allowing judges to apprise juries of other payments plaintiffs have already received for their injuries.²¹⁹ Despite the setback in the Senate, the beat for medical malpractice reform goes on, at the state as well as the federal level.²²⁰



GETTY IMAGES/ARTHUR TILLEY

Summary of All Tort System Costs, 1975–2001

(\$ Billions)

	Insured Liabilities	Self-Insured Liabilities	Medical Malpractice	Total Cost	Tort Costs, % GDP
1975	17.9	1.0	1.2	20.1	1.23%
1976	20.7	1.2	1.5	23.4	1.28%
1977	24.1	2.1	1.9	28.1	1.38%
1978	27.6	2.8	2.3	32.7	1.43%
1979	30.9	3.2	2.8	36.9	1.44%
1980	34.1	5.4	3.5	43.0	1.54%
1981	38.9	6.4	4.3	49.6	1.58%
1982	44.4	7.5	5.1	57.0	1.75%
1983	50.0	8.5	6.1	64.6	1.83%
1984	51.2	9.1	6.6	66.9	1.70%
1985	64.5	12.8	6.6	83.9	1.99%
1986	78.2	17.7	6.5	102.4	2.30%
1987	85.1	19.1	6.9	111.1	2.34%
1988	88.5	18.1	7.0	113.6	2.22%
1989	97.0	20.6	8.1	125.7	2.29%
1990	100.6	20.3	8.7	129.6	2.23%
1991	101.0	21.0	9.4	131.4	2.20%
1992	106.7	24.2	10.4	141.3	2.24%
1993	108.6	23.6	11.5	143.7	2.16%
1994	112.0	22.9	12.5	147.4	2.09%
1995	118.5	26.8	13.6	158.9	2.15%
1996	115.4	24.9	14.5	154.8	1.98%
1997	113.6	24.9	16.1	154.6	1.86%
1998	121.4	27.9	17.1	166.4	1.89%
1999	122.9	27.7	18.4	169.0	1.82%
2000	129.5	30.3	19.8	179.6	1.83%
2001	146.3	38.1	21.0	205.4	2.04%

Total Tort Costs, 1975–2001 \$2,841,100,000,000

Methodology: Measures costs associated with the tort system, including insured costs (and overhead), self-insured costs, and medical costs. Insured costs come from A. M. Best state-audited data, self-insured costs are estimated, and medical malpractice costs come from Tillinghast internal data. Including overhead costs—a real cost of the tort system as we administer it—amplifies the size of tort costs (about 25%) but mutes its growth over time (since overhead costs have declined). These measures do not include tobacco settlement costs, most contract and shareholder litigation costs, most punitive damages costs, or any indirect costs such as defensive medicine or reduced innovation or investment.

Source: Tillinghast-Towers Perrin

1. See TILLINGHAST-TOWERS PERRIN, U.S. TORT COSTS: 2002 UPDATE, TRENDS AND FINDINGS ON THE COSTS OF THE U.S. TORT SYSTEM 19 (Feb. 2003) [hereinafter "TILLINGHAST-TOWERS PERRIN REPORT (2003)"]; TILLINGHAST-TOWERS PERRIN, U.S. TORT COSTS: 2000, *cited in* COUNCIL OF ECONOMIC ADVISERS, WHO PAYS FOR TORT LIABILITY CLAIMS? AN ECONOMIC ANALYSIS OF THE U.S. TORT LIABILITY SYSTEM 11 (Apr. 2002) [hereinafter "CEA REPORT"].
2. See TILLINGHAST-TOWERS PERRIN REPORT (2003), *supra* note 1, at 1.
3. See *id.* at A1. Compound annual growth rates are based on numerical calculations using underlying data.
4. See *id.* at 17, 19. The \$40 billion figure is derived by multiplying the 19% tort cost share of plaintiffs' attorneys times the \$205.4 billion overall tort cost. Revenue data for Intel and Coca-Cola are for full-year 2001, as published in the companies' annual reports. Revenue data for Microsoft are for the final two quarters of FY 2001 and first two quarters of FY 2002, as publicly filed by the company, to correspond to the 2001 calendar year.
5. See *id.* The basis for the Trial Lawyers, Inc. revenue figure and revenue numbers for Microsoft, Intel, and Coca-Cola are described in note 4. Pfizer revenue data are for full-year 2001 as published in the company's annual report. Cisco revenue data are from the final two quarters of FY 2001 and first two quarters of FY 2002, as publicly filed by the company, to correspond as best as possible to CY 2001 (covering 1/28/01-1/26/02).
6. See *id.* The basis for Trial Lawyers, Inc. revenue is described in note 4; Trial Lawyers, Inc. revenue would equal \$42.6 billion in 2002 given Tillinghast-Towers Perrin's estimated overall tort cost of \$224 billion.
7. See <http://www.myclassactionlawsuit.com> (including links to information about a variety of purported class actions and product recalls).
8. See Mary Alexander, *Smart Searching*, TRIAL, Nov. 2002, at 9 (touting ATLA's members-only website, <http://www.exchange.atla.org>, which makes available litigation packets and contains features "that make it easier to tap into [ATLA's] database of pleadings, pretrial and discovery documents, articles, expert witnesses, depositions, and other vital information that will help members prepare—and win—clients' cases"); see also C.L. Mike Schmidt et al., *Manage Big Case Expenses Wisely*, TRIAL, Nov. 2002, at 82 (explaining that one way "to spread out the expense of long-term litigation is to establish a joint venture with other small firms practicing in similar fields").
9. See, e.g., Jason L. Riley, *Salivating over Fast-Food Torts*, WALL ST. J., June 30, 2003, at A16; James K. Glassman, *A Pot Belly of Gold: Tobacco-Style Lawsuits Aimed at Food Processors and Restaurants*, CAPITALISM MAG., Mar. 28, 2003, available at <http://www.capmag.com>; Robert Levy, *Turning Lead into Gold*, LEG. TIMES, Aug. 23, 1999, at 21.
10. See, e.g., Advertisement, National Lawsuit Funding LLC, Providing You with the Cash You Need Before Your Lawsuit Settles, <http://www.nationallawsuitfunding.com>; Press Release, RD Legal Funding LLC, Class Action and Personal Injury Attorneys Turn to RDLF for over \$1,000,000 in Funding, <http://www.legalfunding.com>; see also <http://www.lawyersfunding.com/attorney.htm> ("Why invest your time and continue to put your money at risk when there are **risk free alternatives**? We provide practical, financial solutions to your cash flow problems. Use our money and we'll assume 100% of the risk, if there's no recovery.") (emphasis in original).
11. See Gordon Fairclough & Vanessa O'Connell, *Co-Dependent: Once Tobacco Foes, States Are Hooked on Settlement Cash*, WALL ST. J., Apr. 2, 2003, at A1 (explaining how states plan to raise cash by issuing bonds backed by future payments from tobacco companies under the 1997 Master Settlement Agreement); Editorial, *Smoke Screen*, WALL ST. J., Feb. 20, 2001, at A22 (reporting that in February 2001, a group of tobacco plaintiffs' lawyers "sold bonds to institutional investors backed by \$1 billion in fee payments over the next 12 years, realizing \$308 million in ready cash"); Jonathan Weil, *Tobacco Deal May Back State Bonds*, WALL ST. J., Mar. 31, 1999, at T1 (Texas state senator seeking to enact legislation allowing the financing of large construction projects by borrowing against proceeds of state's tobacco settlement).
12. See TILLINGHAST-TOWERS PERRIN REPORT (2003), *supra* note 1, at 1.
13. See CEA REPORT, *supra* note 1, at 10.
14. See Jim Copland, Editorial, *The Tort Tax*, WALL ST. J., June 11, 2003, at A16. Analysis assumes that the \$205 billion 2001 tort cost compounds annually at 9.11% or 14.34% for ten years; growth rates are derived from underlying Tillinghast-Towers Perrin data; see TILLINGHAST-TOWERS PERRIN REPORT (2003), *supra* note 1, at A3.
15. See generally Steven B. Hantler, *Toward Greater Judicial Leadership on Asbestos Litigation*, No. 41 CIV. JUST. F. (Manhattan Inst. Center for Legal Pol'y, Apr. 2003), available at http://www.manhattan-institute.org/cjf_41.pdf; Mark A. Behrens & Rochelle M. Tedesco, *Two Forks in the Road of Asbestos Litigation*, Vol. 18, No. 3, MEALEY'S LITIG. REP.: ASBESTOS 1 (Mar. 7, 2003).
16. See American Medical Association, *The Medical Liability Crisis: Talking Points* (Jan. 21, 2003), <http://www.ama-assn.org/ama/pub/article/9255-7188.html>; see generally OFFICE OF THE ASST. SECY. FOR PLANNING & EVALUATION, U.S. DEPT. OF HEALTH & HUMAN SERVS., *CONFRONTING THE NEW HEALTH CARE CRISIS: IMPROVING HEALTH CARE QUALITY AND LOWERING COSTS BY FIXING OUR MEDICAL LIABILITY SYSTEM* (July 24, 2002) [hereinafter "HHS REPORT"].
17. See *id.* at 3.
18. See, e.g., *Causes of the Medical Liability Insurance Crisis: Hearing Before the Subcomm. on Labor, Health and Human Services, Education, and Related Agencies of the Senate Comm. on Appropriations* (Mar. 13, 2003) (statement of Leanne Dyess).
19. See HHS REPORT, *supra* note 16, at 3.
20. See Editorial, *The Truth about Thimerosal*, WALL ST. J., Dec. 5, 2002, at A18.
21. See National Childhood Vaccine Injury Act, Pub. L. No. 99-660, Title III, § 301, 100 Stat. 3755 (1986).
22. For example, in one class action lawsuit in Texas, lawyers walked away with nearly \$11 million in fees while plaintiffs received coupons worth \$5.50. See *Class Action Lawsuits: Hearing Before the House Comm. on the Judiciary* (May 15, 2003) (statement of Lawrence H. Mirel, commissioner of insurance and securities for the District of Columbia) [hereinafter "Mirel Testimony"].
23. See *Medical Liability Restructuring: Hearing Before the House Comm. on the Judiciary* (Mar. 4, 2003) (statement of Lawrence E. Smarr, president of the Physician Insurers Association of America) (contingency fees in medical malpractice cases can exceed 40% of the award, excluding costs).
24. See, e.g., Editorial, *Spitzer's Low Tobacco Record*, WALL ST. J., Apr. 11, 2003, at A10 (stating that the six New York law firms representing New York in the state attorneys general tobacco litigation had "piggybacked onto a case that had mostly been won by others"); Milo Geyelin, *Fat Legal Fees in Tobacco Cases Face Challenge*, WALL ST. J., June 16, 1999, at B1 (noting that much of the Massachusetts state tobacco case was "ready-made"); Sueing L.

- Hwang, *A Little-Known Lawyer, a Billion-Dollar Bill*, WALL ST. J., Dec. 10, 1998, at B1 (reporting on efforts of Texas attorney general Dan Morales to obtain a \$1.5 million share of the state attorneys general tobacco settlement for a Houston lawyer who “never took a deposition and never wrote a brief for the case”).
25. See Editorial, *\$30,000 an Hour*, WALL ST. J., July 5, 2000, at A22 (reporting Baltimore attorney Peter Angelos’s attempt to obtain 25% of Maryland’s \$4.6 billion tobacco settlement for 34,000 hours of legal work); Symposium, *Excessive Legal Fees: Protecting Unsophisticated Consumers, Class Action Members, and Taxpayers*, No. 3 MANHATTAN INST. CONF. SERIES 65 (Manhattan Inst. Center for Legal Pol’y) [hereinafter “Excessive Legal Fees”], available at <http://www.manhattan-institute.org/html/mics3a.htm>.
26. See Robert A. Levy, *The Great Tobacco Robbery: Lawyers Grab Billions*, Mar. 6, 1999 (citing Robert A. Levy, *The Great Tobacco Robbery*, LEGAL TIMES, Feb. 1, 1999, at 27), <http://www.cato.org/dailys/03-06-99.html>.
27. See *id.*
28. See *id.*
29. See *id.*
30. See Walter Olson, *Puff, the Magic Settlement*, REASONONLINE, Jan. 2000, <http://reason.com/0001/co.wo.reasonable.shtml> (citing observations by tobacco fee arbitration panel).
31. See Susan Beck, *Trophy Fees*, AM. LAW., Dec. 2, 2002, available at <http://www.nylawyer.com/news/02/12/120202i.html>.
32. *Id.*
33. See Stuart Taylor Jr., *Perverting the Legal System: The Lead-Paint Rip-Off*, NAT’L L.J., Feb. 19, 2003, available at ATLANTIC ONLINE, <http://www.theatlantic.com/politics/nj/taylor2003-02-19.htm>.
34. See *And the Winners Are...*, N.Y. LAW., Dec. 2, 2002, available at <http://www.nylawyer.com/news/02/12/120202j.html>.
35. See CBS Evening News: *HMOs Face Racketeering Lawsuits* (CBS television broadcast, July 1, 2002), available at <http://www.cbsnews.com/stories/2002/07/01/eveningnews/main513904.shtml>.
36. See *\$30,000 an Hour*, *supra* note 25.
37. See Steven Malloy, *Cell Phone Suit Gets Bad Reception*, FOX NEWS, Oct. 4, 2002, available at <http://www.foxnews.com/story/0,2933,64790,00.html>.
38. See *60 Minutes II: The HMO War* (CBS Television broadcast, Mar. 13, 2000), available at <http://www.cbsnews.com/stories/2000/02/29/60II/main166310.shtml>.
39. *Cf. Florida Appeals Court Affirms Settlement of Broin Class Action*, Vol. 14, No. 9, ANDREWS TOBACCO INDUSTRY LITIG. REP. 7 (Apr. 9, 1999), at 17; *Broin v. Philip Morris Cos.*, 641 So. 2d 888 (Fla. Dist. Ct. App. 1994), *rev. denied*, 654 So. 2d 919 (Fla. 1995).
40. See Andy Pasztor and Peter Landers, *Toshiba to Pay \$2B Settlement on Laptops*, WALL ST. J. ONLINE, Oct. 31, 1999, available at <http://zdnet.com.com/2100-11-516294.html>; Press Release, *Toshiba Reaches Settlement of U.S. Lawsuit Regarding Floppy Disk Controllers in Notebook PCs* (Oct. 29, 1999).
41. See TILLINGHAST-TOWERS PERRIN REPORT (2003), *supra* note 1, at 17, 19.
42. See Pete Slover, *Morales’ Plea May Help Friend’s Fraud Case*, ATTORNEY SAYS, DALLAS MORNING NEWS, July 19, 2003, available at <http://www.dallasnews.com/sharedcontent/dallas/tsw/stories/071903dntxm Morales.55d96.html>.
43. See John Moritz, *Dan Morales Indicted in Tobacco Case*, STAR-TELEGRAM, Mar. 6, 2003, available at <http://www.dfw.com/mlld/dfw/news/state/5333435.htm>; see also Associated Press, *Former Attorney General Dan Morales Indicted on Fraud Charges*, AP WIRES, Mar. 7, 2003.
44. See generally WALTER K. OLSON, *THE RULE OF LAWYERS* 30-45 (2003).
45. See Victor E. Schwartz, Mark A. Behrens & Leah Lorber, *Federal Courts Should Decide Interstate Class Actions: A Call for Federal Class Action Diversity Jurisdiction Reform*, 37 HARV. J. ON LEGIS. 494, 490-92 (2000) [hereinafter “Schwartz, Behrens, & Lorber”].
46. See 24 CLASS ACTION REP. 197 (Mar.-Apr. 2003) (showing hourly class action fee of \$1509.77 from 2001-03).
47. See generally Schwartz, Behrens & Lorber, *supra* note 45, at 492-95.
48. See Mirel Testimony, *supra* note 22.
49. See <http://www.classactionamerica.com>.
50. See <http://www.expertfunding.com>; <http://www.amasset.com>.
51. See Ill. Court Orders “Landmark” \$10B Judgment against PM in Light-Cigarette Suit, Vol. 14, No. 3, ANDREWS PROD. LIAB. LITIG. REP. 3 (Apr. 2003).
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