# SMOKE AND MIRRORS:
## The Tobacco Industry's Influence on the Phony "Grassroots" Campaign for Liability Limits

By Ken Silverstein
Public Citizen
March 19, 1996

This report was prepared for Public Citizen's Congress Watch. Congress Watch is the legislative arm of Public Citizen, a nonpartisan organization that fights for government and corporate accountability, consumer rights in the marketplace, safe products, a healthy environment, fair trade, and clean and safe energy sources through lobbying, research, public outreach and litigation.

Special thanks to John Stauber of PR Watch, for providing a tape of Neal Cohen's speech to the Public Affairs Council. Congress Watch Staff Attorney Joe Belluck conceived of the project and provided valuable editorial guidance. Congress Watch Director Bill Magavern, Public Citizen Litigation Group Director David Vladeck and Public Citizen President Joan Claybrook also edited drafts of the report.


Public Citizen
215 Pennsylvania Ave., SE
Washington, DC 20003
(202) 546-4996

## EXECUTIVE SUMMARY

The Congressional debate on legislation to restrict the rights of individuals to recover damages from corporations who make dangerous or defective products marks a high water mark for the so-called "tort reform" movement. That movement has been portrayed in media reports and its own advertising as a grassroots rebellion of small businesspeople and citizens angry at the burden imposed by so-called "frivolous lawsuits." This report exposes that image as a sham.

In fact, the "grassroots" pressure for changes in the civil justice system arises not from spontaneous citizen outrage, but from a very expensive and carefully calculated campaign by major corporations, including insurance companies, automobile manufacturers and pharmaceutical firms. Consultants for these businesses spend enormous sums of money on advertising and front coalitions, while concealing the identity of the real powers behind the movement.

One of the most powerful -- and least scrutinized -- supporters of limits on liability is the tobacco industry. Through a network of lobbyists, consultants, think tanks and corporate allies, the tobacco industry has played a crucial, if stealthy role in the campaign for liability limits. Tobacco firms are experts at covering their tracks, but to an extraordinary extent, this report traces the influence of the tobacco barons on the liability limits movement at the federal, state and local level. Consider:

---Fearful of their legal exposure, the tobacco barons helped drum up the initial hysteria about a bogus "tort explosion" in the mid-1980s.

---The primary backer of the campaign, the American Tort Reform Association, includes several major tobacco companies, and the brains behind ATRA, APCO Associates, has a long history of working for Philip Morris.

---According to Neal Cohen, Executive Vice President of APCO, the firm manufactures "grassroots" support for liability limits at the state and local level while concealing the identity of the real powers behind the movement and the true beneficiaries of the legislation.

---Tobacco-funded think tanks pump out rigged reports and studies to provide the intellectual window dressing for the liability limiters' campaigns.

---In state after state, tobacco lobbyists have been central, if discreet, players in drafting and lobbying for business-friendly product liability legislation.

## Introduction

During the past decade, a nationwide movement has emerged in favor of revamping tort law -- the laws which compensate people who are wrongfully injured and punish those who cause injuries. Over the years, tort law has been developed by the courts through the opinions of judges in cases before them -- state law known as "common law." Traditional common law often favored corporate defendants, and over the past century, state legislatures have stepped in to balance legal playing field. Now, the so-called "reformers" -- hereafter referred to as "liability limiters" -- want to tip the balance back in favor of corporate defendants by passing federal and state statutes that restrict the duties and damages currently imposed by tort law. Since 1980, liability limiters have won significant victories at the state level and are currently championing the product liability bill contained in the Republican Party's "Contract With America."[1]

The so-called "reformers" claim to speak for the average American. The movement's most prominent backer, the Washington, D.C.-based American Tort Reform Association (ATRA), said demurely in one of its early fund-raising letters that it is "not a wealthy special-interest group backed by vast cash resources...ATRA is the homeowner tired of paying exorbitant insurance premiums for minimal coverage. ATRA is the average citizen looking for an end to the threat of being sued."[2]

But lurking behind the scenes at ATRA, and throughout the nationwide movement, are big business groups which have a direct financial stake in restricting product liability lawsuits. Among the more conspicuous backers of the liability limits movement are insurance companies, auto manufacturers, oil and chemical companies, and pharmaceutical firms.

Another powerful actor in the liability limits movement is the tobacco industry. Thanks to its vast resources and squads of lobbyists, tobacco has never paid out a penny in a product liability suit.[3] However, the legal immunity enjoyed by tobacco firms -- whose chief product, cigarettes, kill roughly 460,000 people every year[4] -- is growing more and more precarious. A 1993 report from M.J. Whitman Investment Research warned investors to be wary of holding any tobacco-related securities, and predicted that lawsuits against the industry "will grow in number, ultimately rivaling asbestos personal injury cases in industry impact."[5]

Since the tobacco industry is held in such low esteem by the public, its lobbyists -- even more so than other corporate backers of tort restrictions -- shun the spotlight in the liability limiters campaign. Instead, the tobacco companies hide behind a web of so-called "tort reform" associations, think tanks, lobbyists and, at the state level, a network of so-called "citizens" groups which have been designed and implemented by APCO Associates -- a Washington consulting firm which concocts "grassroots" support for its corporate clients, including several big tobacco firms and insurance companies.[6]

With the Republican takeover of Congress in 1994, tobacco companies and other liability limiters believe that they have their best chance ever to push through a business-friendly bill. The new head of the House Commerce Committee, Rep. Tom Bliley (R-VA), long an intimate friend of the tobacco firms, represents a district whose biggest private employer is Philip Morris. The G.O.P. victory also meant the removal of Rep. Henry Waxman (D-CA), one of the industry's fiercest foes in Congress, from the chair of the Commerce Committee's Health Subcommittee.

The tobacco barons stuffed the coffers of the Republican National Committee with more than $600,000 in so-called "soft money" during the last election cycle, making the industry one of the party's biggest donors.[7] The industry also made vast dispensations to members of Congress who have played a leading role in pushing for liability limits. During the 1994 election cycle, tobacco PACs contributed $91,492 to members of the House Judiciary Committee and $260,550 to members of the House Commerce Committee, the two House committees handling liability legislation.[8] In the six years between 1989 and 1994, the tobacco cartel contributed $1,346,207 to current members of the Senate.[9]

Tobacco interests increasingly support Republicans, but they also heap generous amounts on Democratic leaders. Over the past six years, the campaigns of the five House leaders have received $174,548 from tobacco PACs:[10]

House Speaker Newt Gingrich (R-GA): $41,500
House Majority Leader Richard Armey (R-TX): $10,650
House Majority Whip Tom DeLay (R-TX): $31,150
House Minority Leader Richard Gephardt (D-MO): $50,248
House Minority Whip David Bonior (D-MI): $41,000

The tobacco barons are allied with equally powerful industries on the liability issue. A study by the Center for Responsive Politics found that PACs associated with ATRA and the Product Liability Alliance, another corporate coalition pushing liability limits, contributed $25,870,717 to congressional candidates in the 1993-94 election cycle, and another $4,828,169 in the first six months of 1995. Since the G.O.P. took over Congress in November 1994, the liability limiters shifted the pattern of their contributions from an almost even Democrat/Republican split to giving 74% to Republicans.[11]

By early 1995, Philip Morris CEO Geoffrey Bible was brimming with confidence. In a letter to company stockholders, he wrote that "new faces and new leadership on Capitol Hill [give us] tremendous opportunities to get new and unbiased hearings on the issues that concern us most."[12]

Indeed, the House passed a broad civil "injustice" bill in March, 1995. Soon thereafter the Senate passed its own version, focused more narrowly on product liability, but also uniformly rigged in favor of corporations. On March 14, 1996, a House/Senate conference committee agreed on a final version of the two bills. (a discussion of the bill, and how it would affect the tobacco industry, is contained in the section titled "The Tobacco Protection Act," which begins on p. 6)

**Tobacco's Need for Liability Limits: The Changing Legal Terrain**

Until the early 1980s, the tobacco industry was effectively immune from civil liability through the harsh legal doctrine of "assumption of risk." Under the doctrine of assumption of risk, if a consumer is aware of a particular risk of a product and voluntarily chooses to use the product, he or she is deemed to have full responsibility for any and all consequences. Traditionally, a plaintiff does not recover anything when he or she has voluntarily accepted a known risk.[13] But the courts now appear to be interpreting assumption of risk to mean that consumers must have access to enough information to make sensible choices about risks and benefits.[14]

The tobacco companies have long anticipated that their legal shelter might one day be eroded. As far back as 1970, a lawyer from British American Tobacco (BAT), owner of the Brown & Williamson Tobacco Company, acknowledged in an internal memo that the company "for some time [has] been concerned over the possibility that the BAT might in the future be involved in smoking and health litigation in the USA."[15]

By the mid-1980s, alarm bells were ringing at tobacco headquarters. A June 17, 1984 memo from J.K. Wells, corporate counsel for BAT, reported that the company's legal team feared that "changes in U.S. product liability law, aggressiveness of plaintiffs' lawyers, and smoking health sciences since the 1960s ... have rendered product liability actions against the manufacturers more difficult to defend in the 1980s." Wells also fretted that "adverse evidence which could be attributed to the defendants is a serious problem" and that "papers produced by BAT on smoking and health for internal and worldwide distribution" could be introduced as evidence at trial. [16]

The following year Brown & Williamson and two other tobacco firms, Philip Morris and Lorillard, hired the prestigious Washington law firm Arnold & Porter to help set an early line of defense against the threat of product liability law suits.[17] Arnold & Porter promptly retained public relations specialist John Scanlon, who began collecting newspaper clippings from across the country concerning "outrageous" claims in personal-injury cases.[18] These stories were remitted to influential reporters, columnists, editors and TV producers. Interestingly, in February of 1996, Scanlon was subpoenaed to testify before a grand jury concerning his possible role in assisting Brown & Williamson's attempt to undermine the credibility of former company executive Jeffrey Wigand, who has become a leading industry critic.[19]

"There was very little chance of being able to turn the public's mind around on the issue of smoking," Scanlon said back in 1987. "But start, as I did, with the proposition that most of these liability cases are a demonstrable effect of the increase in the number of lawyers in America. Then try to generate a body of data about lawyers' excesses that the public can easily understand. My clients could only be the beneficiaries of that kind of consciousness."[20]

Helped eagerly along by the insurance industry, Scanlon's efforts bore fruit. Soon, the media began to reflect the moans of business leaders who complained that a "tort explosion" was undermining Corporate America.

Tales of "outrageous" lawsuits were spread far and wide by the press-- even though the stories were badly distorted and often relayed without acknowledgment that many of the cases had been dismissed. Perhaps most well-known is the case of the "foolish" jury that awarded $2.9 million to a woman who spilled a cup of McDonalds coffee on her lap while sitting in her car. This tale omits a few crucial details: during the decade prior to the incident, McDonalds received at least 700 reports of burns from its coffee, which is served at 190 degrees -- hot enough to cause a third degree burn in less than three seconds. The victim in the case, 81-year-old Stella Liebeck, spent eight days in a hospital and required skin grafts. She offered to settle for $20,000, but McDonald's refused, so she took her case to court. A trial judge reduced the much hyped multi-million dollar award to $480,000 and Liebeck later settled out of court for an undisclosed amount that McDonald's insisted be kept secret.[21]

Even as the tobacco industry scored victories on the public relations front, its legal situation was becoming far more uncertain. Thousands of leaked documents from the tobacco barons revealed that the companies have known for decades that nicotine is addictive. Especially damaging were a horde of documents which revealed the industry's efforts to target kids.

In 1963, Brown & Williamson attorney Addison Yeaman wrote in a memo that "we are ... in the business of selling nicotine, an addictive drug." [22] A 1969 Philip Morris memo said that most people start smoking between ages of 16 and 20 and continue because of "the pharmacological effect of smoke upon the body of the smoker," which at times is so powerful that the need for a tobacco fix "preempts food in times of scarcity on the smoker's priority list."[23] Another company memo from more than two decades later called cigarettes a "nicotine delivery system" and likened nicotine to cocaine. [24]

In 1973, R.J. Reynolds' assistant director of research, Claude Teague, Jr., drafted a memo discussing how the company could most effectively hook young people. "The smoking-health controversy does not appear important to [teenagers] because, psychologically, at eighteen, one is immortal," Teague wrote. "Thus, a new brand aimed at the young group should not in any way be promoted as a 'health' brand, and perhaps should carry some implied risk. In this sense, the warning label on the package may be a plus."[25]

These revelations have strengthened cases by plaintiffs who charge that they became addicted to nicotine at a very early age and were unable to stop as adults.

Therefore, they did not make a free choice to become smokers and there was no assumption of risk. Such an argument forms the basis of *Castano vs. American Tobacco*, the biggest product liability suit in history which is currently proceeding in New Orleans. [26]

Another developing legal problem for tobacco companies is that the assumption of risk doctrine clearly does not apply to victims of second-hand smoke. In a major blow to the tobacco cartel, a Florida appeals court ruled in January of 1996 that a group of airline flight attendants could mount a national class-action suit against tobacco companies over precisely this issue.[27]

According to Richard Daynard, chairman of the Tobacco Product Liability Project, the new generation of tobacco lawsuits "will be aided by abundant new evidence of industry wrongdoing, the unprecedented federal proposal to regulate the sale and use of tobacco, and two criminal probes of the tobacco industry...The tobacco companies will no longer be seen as honest purveyors of a legal product...They will be seen, rather, as dishonest pushers of an unregistered (and hence illegal) drug called nicotine."[28]

## The Federal Solution: The Tobacco Protection Act

When asked about the tobacco industry's involvement in liability limits, the cartel's flacks invariably feign indifference. "We're not lobbying tort reform," Brennan Dawson, a spokeswoman for the Tobacco Institute, said last year. "I have not heard of any planned involvement."[29] Similar disclaimers have been issued at the state level when opponents have charged that tobacco interests were secretly backing liability limits.

Yet the product liability bill now before Congress would clearly benefit tobacco. Under the compromise version agreed on by a House/Senate conference committee, punitive damages would be capped at $250,000 or three times the amount of compensatory damages,[30] whichever is greater (that figure, incidentally, is about 3 percent of the 1994 earnings -- $7.8 million -- of CEO Geoffrey Bible of Philip Morris.[31]

Juries impose punitive damages only in cases where a defendant's conduct has been extremely reckless, malicious or grossly negligent. Over the past several years, hundreds of internal tobacco company documents detailing the industry's deliberate suppression of information about nicotine's addictive nature and the health effects of smoking, and its conscious strategy to get children hooked have leaked into the public domain. Such "smoking gun" documents often spur juries to punish defendants, suggesting that if any of the current tobacco cases were to reach the point of a jury verdict, the industry would be at particular risk of large punitive damages.

If the proposed bill becomes law, tobacco industry lawyers will surely argue that the new ceiling would apply to tobacco cases. Rep. Waxman tried to insert an amendment to the House bill in the Commerce Committee, which would have exempted current suits against the tobacco companies from being affected by the bill, but his provision was voted down. In a general sense, as Dan Zegart has written, "limiting awards for pain and suffering or punitive damages will have a severe impact on the ability of plaintiff's bar to go after any large, well-funded corporate adversary, particularly tobacco."[32]

Other changes included in the conference bill:

--- The bills eliminate the rule of joint and several liability for noneconomic damages. Joint and several liability holds all liable defendants responsible for all damages. Under the new standards, wrongdoers are only responsible for their portion of liability, which could leave injured victims without adequate compensation in cases with more than one defendant. In tobacco cases, if a jury were to award damages to a smoker for the pain and suffering of heart disease, emphysema or cancer, but the smoker had smoked several brands, apportioning liability would be extremely difficult, and likely delay the victim's actual compensation.

--- The bill in Congress would preempt state tort laws, replacing state standards developed by the actions of local judges and citizen jurors with one-size fits all federal standards. Although it has many provisions which do not affect tobacco cases directly, the bill erects a federal scaffold upon which tobacco's well-heeled lobbyists can urge Congress to hang more anti-consumer provisions each year. States may keep their tort laws or enact new ones on one condition -- they are more favorable to corporate defendants than the federal law.

## Tobacco's Campaign: Grassroots or Astroturf?

The American Tort Reform Association, which has been the most visible organization promoting liability limits bills, refuses to say who pays its bills. However, according to *Legal Times*, "most of [ATRA's] funding comes from large corporate donors. Insurance firms ...are each good for $50,000 to $75,000," one unnamed lobbyist familiar with the Association told the publication.[33] The Association's promotional literature, lists its membership as including Aetna, Fluor Corporation, the Chemical Manufacturers Association, Eli Lilly, Dow Chemical, Mobil -- and Phillip Morris and Covington and Burling, the law firm that represents the Tobacco Institute. According to ATRA's membership application, corporations as large as Philip Morris, with gross income of $5 billion or more, must pony up a minimum of $12,500 per year.[34]

On the face of its promotional literature, ATRA has no deeper ties with the tobacco industry than with any other industry represented among its membership. Indeed, a listing of ATRA's board of directors in its annual IRS returns shows no apparent links to tobacco at all. However, closer inspection reveals that Samuel B. Witt, III, of the Alexandria, Virginia consulting firm Stateside Associates formerly served as an executive and attorney for R.J. Reynolds and for a period directed the company's product liability efforts in the states.[35]

More important is the relationship between ATRA and APCO associates, a Washington, D.C.-based lobbying and political consulting firm. The American Tort Reform Association claims to have a "staff" of eight people, one of whom is Neal Cohen, who is also Executive Vice President and Director of "Political Support Services" for APCO. ATRA promotional literature describes Cohen as "ATRA's grassroots consultant."[36]

Cohen and APCO pride themselves on their ability to conduct political campaigns on behalf of corporate clients without revealing who is behind the campaign. An APCO brochure for potential clients includes a section describing "what people say about APCO projects (without even knowing about APCO)."[37] The brochure proudly describes the firm's stealthy work for both ATRA and state level "grassroots" organizations typically called "Citizens Against Lawsuit Abuse."

> *You won't read about APCO on the front page of the newspaper talking about our work, but that doesn't mean that our work is not making the front page.  Our coalitions speak for themselves and the results speak*

*volumes.*

*Here's what some people have said about a few APCO clients and the campaigns we've implemented. We're proud of our record and we're even prouder that the comments below are about our campaigns and their results -- not us.*

* *"Opponents of legal reform credit the business community, led by the American Tort Reform Association (ATRA) in Washington, for mounting a successful public relations campaign across the country to convince most people that the legal system is in need of fundamental repair.*
  *-Christian Science Monitor*

* *One force behind the change has been the organization of grass roots organizations, often known as Citizens Against Lawsuit Abuse.*[38]
  *-Liability Week*

APCO refuses to discuss its clients, but the firm has a long relationship with tobacco giant Philip Morris. APCO was founded in 1984 as a spin-off of the huge Washington, D.C. law firm of Arnold and Porter, one of whose largest clients is Philip Morris. APCO was sold to GCI Communications in 1991, but continued to register as a lobbyist for Philip Morris until 1993.[39] Two knowledgeable insiders who spoke on condition of anonymity say that APCO continues to bill both the American Tort Reform Association and tobacco firms Philip Morris and Brown and Williamson directly for liability limits work. One of these sources estimates that Philip Morris accounts for a quarter to a third of the firm's revenue, down from over half a few years ago.[40]

APCO is also a registered lobbyist for other major corporate powers behind the liability limits movement. The firm lobbies for several big insurance companies, including State Farm, which has poured $3.6 million into the liability limits fight in Arizona alone (see page 17).[41]

APCO provides a broad variety of services to its corporate clientele, including direct lobbying of Congress, coordinating strategic philanthropic activities and handling "crisis management." But APCO VP/ATRA consultant Neal Cohen's particular specialty is "grassroots" lobbying (which doesn't need to be disclosed on federal lobbying registrations).

In an article on grassroots lobbying, *Campaigns and Elections* magazine, a trade journal for political consultants, described APCO as "a full service public affairs firm." APCO told the magazine that its grassroots lobbyists supply "general consulting, grassroots organizing and field operations, petition management and signature gathering, community coalition building, telephone bank contacts, and direct mail" to its major clients, including ATRA, at the federal, state and local levels.[42] APCO's promotional literature even pledges to monitor "emerging grassroots efforts that might lead to or result in negative actions affecting clients (such as boycotts or regulatory actions)." [43]

"[We employ] campaign tactics to create an environment in support of our client's legislative and regulatory goals," says the company brochure. "Our staff has written the direct mail, managed the telephones [and] crafted the television commercials."[44] In one such TV ad, firefighters complain that they're so fearful of law suits that they hesitate to rescue people in burning buildings. This drew a rebuke from the International Association of Firefighters, whose secretary-treasurer, Vincent Bollon, called the spot "unconscionable" and "the most asinine thing I've ever seen."[45]

State-level "grassroots" coalitions -- typically called Citizens Against Lawsuit Abuse (CALA) or People for a Fair Legal System -- are Cohen's brainchild. These outfits recruit hundreds of companies and prominent individuals to participate in their bogus "grassroots coalitions," but it APCO and its high-paying clients call the shots. Cheryl Carson, the executive director of a CALA chapter in West Virginia, told *The Charleston Gazette* that ATRA supplies the state's CALA chapter with all of their television commercials and print ads, performs research and awards them start-up grants.[46]

Neal Cohen is keenly aware of the need to keep his firm's clients out of the limelight, as public awareness of their identity would detract from the illusion that the CALAs and other state liability limits organizations arose from a spontaneous, local explosion by outraged citizens and small businesses. In 1994, the APCO VP/ATRA consultant was a star speaker at a conference on corporate grassroots lobbying sponsored by the Public Affairs Council, the public relations trade association, at the

Colony Beach & Tennis Resort in Sarasota, Florida. A tape of the speech was provided to Public Citizen by John Stauber, co-author of *Toxic Sludge is Good for You*, a book about the public relations industry.

In his speech, Cohen warned his corporate p.r. colleagues -- who included representatives from State Farm, Schering-Plough, the American Council of Life Insurance, Nationwide Insurance, and Southwestern Bell[47] -- that opponents of the liability limiters would seek to embarrass the "movement" by exposing its biggest backers:

> "You need to have credibility and that means when you pick people to join your coalition, make sure they're credible. And if they're not credible, keep 'em away. In a tort reform battle, if State Farm -- I think they're here -- Nationwide, is the leader of the coalition, you're not going to pass the bill. It's not credible. Because it's so self-serving; everybody knows that the insurance companies would be one beneficiary... You've got to make sure the leaders of the coalition are credible, and the core group of the coalition and the spokespeople..."[48]

However, Cohen also made clear who holds the real power in these coalitions. For all their pretense to grassroots spontaneity, the state liability limits coalitions are dominated by the few large national firms with the biggest financial stake:

> "If you contribute big money to a coalition you better be at the table when the decisions are made and...it ought to be a card table and not a corporate [board room] table. Broad-based membership is: What does the public see? What do the legislators see? Decision-making is: a core group of three or so people who have similar interests and who are going to get the job done."[49]

In Mississippi, where APCO in 1993 dreamed up Mississippians for a Fair Legal System (M-FAIR), Cohen gloated that weak disclosure laws meant that opponents "didn't really know [what business interests were] at the heart of everything. The problem they faced was we had 1,500 Mississippians mixed in with who our clients were." He also boasted that the M-FAIR had recruited Warren Hood, owner of one of the state's biggest banks and the one which politicians often relied on for campaign loans. This, he exclaimed, made Hood someone elected officials found especially hard to say "no" to.[50]

Cohen's strategy is to take the complex issue of tort law and reduce it to a question of lawsuit abuse. In his warmly received address to the Public Affairs Council, he states that "Rule No. 1 for me is stay away from substance. Don't talk about the details of legislation. Talk about...frivolous lawsuits, lawsuit abuse, trial lawyer greed."[51]

Cohen was not eager to discuss APCO's work outside the cozy confines of a corporate p.r. conference. Asked by Public Citizen if his firm worked for tobacco companies, Cohen said, "It's a firm policy to never reveal who our clients are unless it's a public requirement." He brought the interview to a hasty close upon learning that Public Citizen had secured a tape of his remarks at the public relations conference.[52]

**Tobacco's Think Tanks**

The tobacco industry is particularly adept at creating front groups, a necessity for an industry so reviled by the public. The California-based Americans for Nonsmokers' Rights has compiled a list of dozens of such groups, including the National Smokers' Alliance, which Burson-Marsteller created for its client Philip Morris, and the National Environmental Development Association, an outfit dreamed up by the PR Firm of E. Bruce Harrison with money from R.J. Reynolds, and which fights laws against smoking in public places.[53]

One of the keys to tobacco's public policy success is the generation of "research" by supposedly independent think tanks. The tobacco industry funnels hundreds of thousands of dollars to organizations that generate intellectual defenses of their policy positions. For example, the Oakland, California-based Independent Institute published a study opposing cigarette taxes while taking money from several major tobacco firms.[54]

Two Washington think tanks at the forefront of the liability limiters movement also have substantial links to tobacco. The soothingly named Citizens for a Sound Economy (CSE), whose leaders include James Miller, ex-budget director under President Ronald Reagan, and C. Boyden Gray, former counsel to President George Bush, receives millions of dollars in donations from corporations and rightwing foundations. Its president, Paul Beckner, heads the Legal Reform Coalition, which along with ATRA is a big backer of liability limits.[55] Last fall, Beverly McKittrick, who formerly headed CSE's Legal Project, became legislative counsel to Philip Morris.[56]

During the 1995 House debate on liability limits, CSE spent millions of dollars on a media blitz and lobbying campaign in 60 congressional districts. In conjunction with the American Council of Life Insurance, the National Federation of Independent Business Inc. and the U.S. Chamber of Commerce, CSE has also helped pay for an ad campaign in *Roll Call*, *The Washington Post* and *The Washington Times*, among other publications.[57]

CSE won't reveal its sources of funding but acknowledges that its funders include R.J. Reynolds and Philip Morris. The latter, according to internal company memorandums, gave three contributions totalling $91,800 to CSE,[58] and another $100,000 to CSE Inc., the organization's lobbying arm.[59]

Philip Morris and RJR also fund the Washington Legal Foundation, which produces studies and places newspaper op-eds in support of liability limits. Alan Slobodin, now Bliley's staff counsel at the Commerce Committee and attack dog on the Food and Drug Administration, previously served as the Foundation's president and general counsel for the legal studies division.[60] He regularly testified in Congress against anti-tobacco legislation.

Until November 1994, one of the leaders in the national liability limits movement made his home at another tobacco-funded think tank. Before his election to the House of Representatives, Rep. David McIntosh was Senior Fellow for Domestic Affairs at the Competitiveness Center of the Hudson Institute, where he co-authored a study of medical malpractice which concluded that "[t]he high cost of medical liability demonstrates the need for vigorous tort reform."[61]

Hudson's Competitiveness Center was formed in March 1993, shortly after McIntosh's former boss Dan Quayle left office as Vice President. Now a Hudson Institute Trustee, Quayle serves as Chairman of the Competitiveness Center, which is supposed to "promote vigorous public debate on legal reform,"[62] and other issues. In late 1994, Hudson created a "Project for Civil Justice Reform," which works closely with the Competitiveness Center, and is "designed to develop broad public support for major systemic reform of contingency fees, automobile torts, and other legal barriers to productivity."[63]

Craig L. Fuller, Philip Morris's Senior Vice President, Corporate Affairs is a member of the Hudson Institute's Board of Trustees.[64] Philip Morris is one of 48 corporations, individuals and foundations in Hudson's "Trustees' Circle," the most generous category of contributor to the Institute.[65] To enter the circle, companies must ante up "$25,000 or more in annual contributions."[66]

Philip Morris also funds the Center for the Study of American Business at Washington University in St. Louis, home to one of the loudest voices for liability limits. As Distinguished Executive in Residence at the Center for the Study of American Business at Washington University in St. Louis, former Monsanto CEO Richard Mahoney conducted a "survey" of the impact of liability on the economy which consisted of asking his CEO pals to call up an answering service and complain anonymously about the amount they've paid to settle lawsuits over the past 5 years.[67] Mahoney published the results, complaining that settlements concluded under the threat of multiple punitive damages amounts to a huge "hidden litigation tax," and landed an excerpt on the op-ed page of *The Washington Post*.[68] Of course, the identities of the responding CEOs remain unknown, as does the quality of the complaints that they settled, and Mahoney's research cannot be tested against documentary evidence because the corporations whose CEOs responded to Mahoney's "survey" routinely insist on secrecy agreements when settling cases.

The Center for the Study of American Business does not reveal the level of contributions from its donors, but its 1994 annual report lists Philip Morris as one of its "generous contributors who have made our research possible," along with a bevy of big pharmaceutical, chemical, oil and transportation companies.[69]

## Liability Limits in the States

In recent years, the liability limiters have scored victories in more than a dozen states and "reform" legislation is pending in many others during the current legislative season. An article in the *ABA Journal* in August of 1995 said that while Congress still hadn't acted on the GOP's product liability bill, "the states may already have done the job."[70]

In state after state, efforts to limit civil liability for corporate wrongdoers bear the stealthy fingerprints of tobacco industry involvement. Although they don't always appear on state disclosure documents, key tobacco lobbyists and allies have led the fight for liability limits in a number of states.

## CALIFORNIA

Tobacco scored a big victory in California in 1987, when the state trial lawyers cut a deal with the Association for California Tort Reform -- a group funded by R.J. Reynolds and Philip Morris -- and pushed through the "Civil Liability Reform Act."[71] The bill made it almost impossible to sue makers of "inherently unsafe" products such as butter, sugar, alcohol and cigarettes. In return, plaintiffs' attorneys bringing medical malpractice suits were allowed to collect a higher percentage of contingency fees.

The Act's language was crafted by Richard Kingham and a second attorney from D.C.-based Covington & Burling, a firm that represents the Tobacco Institute and Philip Morris.[72]

## PENNSYLVANIA

Covington & Burling also played a leading role in a massive but failed 1989 to 1992 liability limits effort in Pennsylvania. Kingham and another firm lawyer helped set up the Pennsylvania Task Force on Product Liability, which mustered some of the nation's leading corporations, including British American Tobacco and Philip Morris, the latter of which was one of the group's top funders.

The lawyers also helped write the task force's proposed legislation, which, not surprisingly, was highly favorable to the tobacco industry. It would have exempted from liability manufacturers of "common consumer products" known to be risky. In addition to Kingham -- who concedes that he has also worked for liability limits in Ohio, New Jersey, Texas and Indiana -- at least twenty more tobacco lobbyists were deployed to press for the measure.[73]

Sen. David Brightbill supported the liability limiters bill but sought to strip the clause that offered legal protection to the tobacco lords. Though proponents insisted that the bill's purpose was not to protect tobacco, they swiftly voted down the Brightbill amendment -- thereby generating suspicion about their motives and ultimately helping defeat the bill.[74]

## TEXAS

In Texas, a 1993 liability limits bill which passed the legislature and was signed by then-Governor Ann Richards prohibits law suits in the case of "common consumer product[s] intended for personal consumption, such as sugar, castor oil, alcohol, tobacco, and butter." The measure was modeled on California's 1987 law, and, as in California, resulted from a deal struck between trial lawyers and a business lobby.[75]

Tobacco lobbyists were at the forefront of the movement, which was led locally by the Texas Civil Justice League (TCJL). A key player was Jack Gullahorn of the law firm of Akin, Gump, who headed Philip Morris's state product liability team in the early 1990s.[76] Gullahorn was also paid by the TCJL -- between $10,000 and $25,000 according to state disclosure reports -- for his efforts on behalf of "reform" (more recently, Gullahorn has lobbied for the NRA and US Tobacco).[77] Two other Philip Morris contract lobbyists, Rusty Kelley and Buddy Jones, were also central to the liability limits battle, lobbying on behalf of the Texas Civil Justice League.[78]

When Governor Richards signed the bill, her spokesperson told the Associated Press that the Governor "thinks the public really does want some protection from lawsuits that are driving up costs. ....They [members of the business community] have mustered overwhelming public support for that sentiment in this state ... The public consistently told the Legislature that they wanted something done."

APCO cites the Texas campaign as one of its successful "grassroots" efforts, quoting Governor Richards' spokesperson's comments in its brochure as an example of "What People Say about APCO Projects (without even knowing about APCO)."[79]

## NEW JERSEY

In 1994, liability limiters launched a major drive in New Jersey -- where tobacco had already won substantial protection in 1987 -- which was led by one of APCO's Citizens Against Lawsuit Abuse fronts. CALA described itself as a coalition of small businesses and somehow neglected to mention that it received major financial support from the tobacco industry, from Bristol-Myers Squibb, a maker of silicon breasts implants, and from Owens-Corning Fiberglass, a manufacturer of asbestos.[80]

New Jersey's CALA was based in the offices of Princeton Public Affairs, a firm headed by Dale Florio, Philip Morris's top Garden State lobbyist. Not only had Florio formerly been director of Philip Morris's state government affairs operations, but the tobacco company had paid to put him through law school. Though he had no formal title with CALA, Florio ran the outfit and the overall liability limits campaign, an effort which earned him $300,000 from Philip Morris. Three other tobacco companies, American Brands, Brown & Williamson, and Lorillard, tossed in $24,000 each.[81]

Also working on the New Jersey campaign was John Sheridan, whose law firm of Riker, Danzig, Scherer, Hyland & Perretti represents R.J. Reynolds. It was Sheridan who had drafted the 1987 law which barred most suits against tobacco companies, a task he performed while on retainer for Covington & Burling. His fees were picked up by, among others, Philip Morris and RJR.[82]

## ARIZONA

In 1994, Arizonans voted down a liability limits ballot initiative for the third time. Dan Isaacson, a lobbyist for State Farm and for the Tobacco Institute, was a top lobbyist for the APCO-inspired People for a Fair Legal System (PFFLS).

Also on the ballot that year was an initiative (which passed overwhelmingly) that hiked taxes on cigarettes by 40 cents per pack. In late 1993, as supporters of the tobacco initiative were seeking signatures to get on the ballot, the *Yellow Sheet*, an insider political newsletter, reported that PFFLS leaders were "hoping to attract contributions from the tobacco industry, and that creates an interesting political situation, since the tobacco people have just been hit between the eyes with a two-by-four: the health-care coalition initiative to raise cigarette taxes...The liability limiters worry that the tobacco industry will devote so much time and effort to battling the tax-hike initiative that it will have little time or energy for the less immediate (if no less financially important) issue of liability limits."[83]

Indeed, the PFFLS sought to keep the tax hike initiative off the ballot for precisely that reason. One of the leading figures in PFFLS, Bill Jones, Jr., an attorney and board member of an Arizona hospital, warned the Arizona Hospital Association that its support for the tobacco tax hike initiative was "unwise." Added Jones: "I can tell you without question that if it appears sufficient signatures will be gathered to put this issue on the ballot, the issue of rate regulation [of hospitals] will be on the ballot with it. I don't know if there has been a hospital association that has ever played in the political arena with Philip Morris and some of the tobacco companies, but I can tell you they are not 'nice guys'. They are professionals and they will play all of their cards. This can only result in a close examination of the financial status of hospitals."[84]

Senate President John Greene, another leader of the tort campaign, also sought to harass the tobacco tax proponents. He publicly stated that he would push the state legislature to strip tax exemptions from hospitals and other health care organizations which backed the tobacco tax hike. Greene and other top Republicans also threatened health care organizations during a series of closed door meetings, prompting the *Arizona Daily Star* to denounce his "insidious" tactics and flagrant arm twisting. "Just to have [Greene et al.] sit you down for a little talk is intimidating enough. When it's accompanied by a threat to look into your tax status, you know they mean business."[85]

Undeterred by their previous defeats, liability limiters are again pressing to get on the Arizona ballot this year. As Cohen of APCO recommends, PFFLS has been very coy about who is really behind the movement. On February 1, the group issued a press release announcing that "more than twenty of Arizona's leading businesses have joined together with numerous civil justice victims across the state to support the *1996 People's Civil Justice Bill of Rights*. This proposed constitutional amendment was drafted by the people for the people in countless meetings held in nearly every major community across the state."[86]

The PFFLS release includes a list of "major donors" who have endorsed the 1996 campaign.  Most of the top donors on the list are big Arizona employers, including Banc One Arizona Corporation ($20,000), the Phoenix Suns basketball team ($10,000), and the largest giver on the list, Del Webb Corporation ($25,000). The major national corporations on the list chipped in with minimal amounts -- insurance giant CIGNA is listed as giving a modest $1,000. The release quotes Linda Davis, whose ex-husband sued her and her daughter from jail following his conviction on child molestation charges to the effect that "this seed money that these companies have donated is the lifeblood of countless victims of sue-happy, super-rich personal injury lawyers."[87]

With its local business front and outraged anti-lawyer rhetoric, Arizona's PFFLS bears the identifying marks of a classic APCO-style astroturf operation. The press release mysteriously neglects to mention the influence of State Farm insurance company -- one of the companies whose participation Cohen singled out as lethal to a successful liability limits campaign. According to Arizona state disclosure filings, State Farm contributed $55,500 to PFFLS on March 17, 1995, more than twice the largest amount given by the listed "major donors." Indeed, describing the latest round of contributions as "seed money" creates the erroneous impression that this is a new effort -- *since the founding of PFFLS, State Farm has contributed a staggering $3,631,676, out of $5.2 million in total contributions to this movement "by the people for the people" of Arizona*.[88]

LOUISIANA

Liability limiters have long been active in Louisiana, though thus far they haven't achieved much success. However, a special session of the legislature has been called for the spring of 1996 with liability limits high on the agenda.

Internal Philip Morris memorandums describe its team of lobbyists in the state as "superb...and they would be the first to tell you that." The company's chief hired gun on liability limits is Randy Haynie, one of the state's most prominent lobbyists.[89]

According to Russ Herman, one of the lead attorneys in the *Castano* case, just weeks after the Castano suit was initially filed in 1994, Haynie tried to cut a deal with state trial lawyers.[90] Haynie offered to help win passage of a bill that would expand the right of employees to sue companies over job-related injuries if the trial lawyers would accept an amendment to product liability law which would lump tobacco in with butter, milk and other "inherently unsafe" products, ala California. The offer was rejected.[91]

Louisiana offers another example of the tobacco industry's use of allied organizations to promote its agenda. One Philip Morris memo calls the powerful

Louisiana Association of Business and Industry (LABI) "particularly helpful [for having] fronted the products [liability] stuff." It also rates a LABI lobbyist, Dan Juneau, as being a close Philip Morris confederate who in the early 1990s had carried the ball on liability limits.[92]

## NORTH CAROLINA

The North Carolina state legislature passed an industry-backed product liability bill last year. One of its provisions bars liability in the case of products that pose an "open and obvious risk", such as tobacco and alcohol. "There's now almost no chance for a citizen of North Carolina to sue a tobacco company," says Charles Cromer, legislative counsel for the Academy of Trial Lawyers. "They'd have to go to another state."[93]

Senator Roy Cooper, who chairs the Judiciary Committee, says that a handful of tobacco lobbyists worked on the bill, including one from Philip Morris and Gene Ainesworth of R.J. Reynolds. Cooper said the coalition which pushed liability limits was "unrivaled in North Carolina's legislative history." According to Cooper, the business groups behind the effort -- ranging from the insurance industry to the medical industry to tobacco -- "didn't even make a public appeal. They just put their legislative agents to work."[94]

## INDIANA

In Indiana, the legislature passed a liability limits bill in 1995 that caps punitive damages and institutes a so-called "loser pays" provision. Senate Minority Leader Robert F. Hellmann, a Terre Haute Democrat who opposed the bill, said his examination of the legislation led him to conclude that it "fits the tobacco companies like a glove."[95] Governor Evan Bayh (D) vetoed the bill, but it became law when the Republican-dominated legislature override the veto.[96]

Proponents of liability limits never mentioned tobacco, instead focusing on "frivolous" injury lawsuits involving products such as lawnmowers. However, the leading lobbyist for the measure was Ronald Gifford, who represents Philip Morris. Gifford claimed that his work on liability limits was solely on behalf of another client, General Motors. However, he acknowledged that he kept  Philip Morris informed about the legislation.[97]

# Conclusion

On March 14, 1996, a House-Senate conference committee broke an eight month stalemate by agreeeing on a bill to limit the liability of corporations who produce dangerous or defective products. The timing of the agreement presents a ghastly irony to the millions of smokers addicted to the tobacco barons' lethal product. The day before the conference agreement, Liggett Corporation breached a thirty year tobacco industry stonewall by reaching a tentative settlement with the plaintiffs in the *Castano* case, and with four states suing cigarette manufacturers for reimbursement for the health care costs of smoking related illnesses. Liggett admitted no fault, but for the first time in history a tobacco company has agreed to accept some financial responsibility for the injuries caused by its products. Liggett also agreed to abide by the Food and Drug Administration's proposed rules to limit promotion of smoking to minors regardless of whether the agency is able to push the rule through.

The Liggett settlement agreement culminated decades of exhaustive legal effort on behalf of smokers, against aggressive industry legal and lobbying strategies. Millions of Americans died without receiving compensation for their injuries before this door swung slightly ajar, and the *very next day* Congress begins swinging it back shut by proposing to limit the power of citizen jurors across the country to hold tobacco companies accountable for their actions.

The so-called "tort reform" movement, which appears poised on the brink of its greatest success, has pulled a clever sleight of hand on much of the media and many legislators. Generously funded by corporate giants, the liability limiters have successfully passed themselves off as a populist uprising. In reality, the movement was hatched in Washington, directed by Beltway bandits, and has produced legislation of big corporate interests, by big corporate interests and for big corporate interests. If this sham succeeds, it will be due as much to the influence of the tobacco industry as any other single actor. Consider:

---Fearful of their legal exposure, the tobacco barons helped drum up the initial hysteria about a bogus "tort explosion" in the mid-1980s.

---The primary backer of the campaign, the American Tort Reform Association, includes several major tobacco companies, and the brains behind ATRA, APCO Associates, has a long history of working for Philip Morris.

---According to Neal Cohen, Executive Vice President of APCO, the firm manufactures "grassroots" support for liability limits at the state and local level while concealing the identity of the real powers behind the movement and the true beneficiaries of the legislation.

---Tobacco-funded think tanks pump out rigged reports and studies to provide the intellectual window dressing for the liability limiters' campaigns.

---In state after state, tobacco lobbyists have been central, if discreet, players in drafting and lobbying for business-friendly product liability legislation.

# ENDNOTES


1. Middleton, Martha, "A Changing Landscape" *ABA Journal*, August, 1995, p. 56.

2. Gannon, John, *Tort Deform -- Lethal Bedfellows*, Washington, DC, Essential Information, 1995, p. 22.

3. Schwartz, John and Torry, Saundra, "Anti-Tobacco Activists Hope to Put Industry's Legal Tactics on Trial" *The Washington Post*, September 26, 1995.

4. American Medical Association estimate, cited in Kriz, Margaret, "Where There's Smoke..." *National Journal*, May 7, 1994, p. 1056.

5. Page, Peter, and Zegart, Dan, "Tobacco, asbestos firms quietly move to limit suits," *The Times* (Trenton, New Jersey), June 12, 1994, p. 1.

6. Tobacco: Report Pursuant to Federal Regulation of Lobbying Act, Identification Number 16067013, 4th Quarter 1992, 1st Quarter 1993, 2d Quarter 1993, and interviews with knowledgeable insiders given on condition of anonymity, February and March, 1996. Insurance: *Washington Representatives 1995*, Washington, D.C., Columbia Books, p. 24.

7. Isikoff, Michael, Thomas, Rich, and Click, Daniel, "Of Tobacco, Torts and Tusk," *Newsweek*, November 28, 1994, p. 30.

8. Federal Election Commission data analyzed by the Center for Responsive Politics.

9. Federal Election Commission data analyzed by Public Citizen.

10. Federal Election Commission data analyzed by Public Citizen.

11. Watzman, Nancy, and Youngclaus, Jay, *Cashing In From A to Z: An Index of Lobbying, Lawmaking and Campaign Money in 1995*, Washington, Center for Responsive Politics, 1995, p. 18.

12. Levin, Myron, "G.O.P Win Spells Brighter Days for tobacco Firms," *Los Angeles Times*, July 3, 1995.

13. Marshall Shapo, *Products Liability and the Search for Justice, Carolina Academic Press*, 1993, p. 30.

14. Ibid.

15. Internal Brown & Williamson memo dated November 5, 1970. The memo is part of a collection of documents leaked anonymously to Dr. Stanton Glantz, and now available as the Brown and Williamson Collection of the University of California, San Francisco's Tobacco Control Archives. The documents consist of internal reports, research results and data, correspondence and internal memos, proceedings of

conferences, meeting minutes and agendas, and technical information about the contents of cigarettes and pesticides. The collection may be found on the World Wide Web at http//galen.library.ucsf.edu/tobacco/bw.html.

16. File Note from J.K. Wells, June 17, 1984, re: Conference with BAT Legal on U.S. Product Liability Litigation, Brown and Williamson Collection, UCSF Tobacco Control Archives, document 1830.01.

17. Cockburn, Alexander, and Cockburn, Andrew, "Flacks: Public Relations Specialists," *Playboy*, January, 1987, p. 98.

18. Ibid.

19. Landler, Mark, "A Practitioner of Bare-Fisted Public Relations Takes Punches," The New York Times, February 12, 1996, p. D1.

20. Ibid.

21. Press, Aric, Carroll, Ginny, and Waldman, Steven, "Are Lawyers Burning America?" Newsweek, March 20, 1995, p. 32-35.

22. "Implications of Battelle Hippo I & II and the Griffith Filter," Brown and Williamson Collection, UCSF Tobacco Control Archives, document 1802.05.

23. Schwartz, John, "Tobacco Firm's Nicotine Studies Assailed on Hill" *The Washington Post*, July 25, 1995.

24. Freedman, Alix, "Philip Morris Memo Likens Nicotine to Cocaine," *The Wall Street Journal*, December 8, 1995 p. B1.

25. Full transcript published as "Memo of the Month" *The Washington Monthly*, December, 1995, p. 32-36.

26. Zegart, Dan, "Breathing Fire on Tobacco," *The Nation*, August 28/September 4, 1995, p. 193.

27. Collins, Glenn, "Group Wins Right to Sue Over Tobacco," *The New York Times*, January 5, 1996, A10.

28. Daynard, Richard, and Kelder, Graham, Jr., "Tobacco Industry Under Fire," *Trial*, November, 1995, p. 20.

29. Schwartz, John, and Torry, Saundra, "Tobacco Firms Could Get a Boost From Bill to Curb Damage Awards," *The Washington Post*, March 11, 1995.

30. See, for example, advertisements by Aetna, collected in Doroshow, Joanne, *The Case for the Civil Jury: Safeguarding A Pillar of Democracy*, Washington, Center for the Study of Responsive Law, 1992.

31. Jackson, Jesse "Good Times Ahead for White, Rich Males in America," *Business and Society Review*, June 22, 1995, p. 59.

32. Zegart, Dan, "Breathing Fire on Tobacco," *The Nation*, August 28/September 4, 1995.

33. "Proponents of Reform" *Legal Times*, April 17, 1995.

34. Membership Application, American Tort Reform Association.

35. Gannon, John, *Tort Deform -- Lethal Bedfellows*

36. Membership Application, American Tort Reform Association.

37. "APCO ASSOCIATES INC.: A GCI Group Company," APCO promotional brochure.

38. Ibid.

39. Report Pursuant to Federal Regulation of Lobbying Act, Identification Number 16067013, 4th Quarter 1992, 1st Quarter 1993, 2d Quarter 1993.

40. Interviews with knowledgeable insiders given on condition of anonymity, February and March 1996.

41. Report Pursuant to Federal Regulation of Lobbying Act, Identification Number 16067016, 1st Quarter 1993 through 3d quarter, 1995.

42. Faucheux, Ron, "The Grassroots Explosion," *Campaigns & Elections*, December/January, 1995.

43. APCO ASSOCIATES INC.: A GCI Group Company, APCO promotional brochure.

44. APCO ASSOCIATES INC.: A GCI Group Company, APCO promotional brochure.

45. Goldman, T.R., "Lopez Gives Tort Reform Foes a New Weapon," *New Jersey Law Journal*, May 15, 1995, p. 9.

46. Messina, Lawrence, "Tort Reform Campaign Goes on Air," T*he Charleston Gazette*, February 9, 1996.

47. "Our Annual Back-to-Back Grassroots Meetings," preparation materials for attendees of conference sponsored by the Public Affairs Council, Sarasota, Florida, February 7-10, 1994.

48. Cohen, Neal, "Coalitions and Ally Development: The New Imperative in Public Policy Work," Presentation to Public Affairs Council Conference, Sarasota, Florida, February 10, 1994, 10:00 a.m. A

tape of Cohen's presentation was provided to Public Citizen by John Stauber.

49. Ibid.

50. Ibid.

51. Ibid.

52. Telephone interview with Neal Cohen, February 28, 1996.

53. Americans for Nonsmokers' Rights, *Tobacco Industry Front Groups*, October 11, 1995.

54. Ibid.

55. Stone, Peter H., "Grass-Roots Group rakes In The Green" *National Journal*, March 11, 1995, p. 621; Moore, W. John, "Wichita Pipeline" *National Journal* May 16, 1992 p. 1168; "Proponents of Reform" *Legal Times*, April 17, 1995.

56. "People: Washington's Movers and Shakers," *National Journal*, March 19, 1994, p. 683.

57. Stone, Peter H., "Grass-Roots Group rakes In The Green" *National Journal,* March 11, 1995, p. 621

58. Internal Phillip Morris Memorandum, printout of company charitable contributions. Internal Phillip Morris memo, one of numerous such documents obtained by Dr. Alan Blum and Eric Solberg of Doctors Ought to Care (DOC), Houston Texas. Memos are from an anonymous Phillip Morris lobbyist dubbed "Smoking Gun," by DOC, hereafter referred to as "Smoking Gun Memos."

59. IRS Form 990, Citizens for a Sound Economy, Inc., 1991.

60. Testimony of Alan Slobodin before House Energy and Commerce Committee, Subcommittee on Transportation and Hazardous Materials, July 25, 1995.

61. McIntosh, David M., and Murray, David C., *The High Cost of Medical Liability*, Hudson Briefing Paper, Number 163, Indianapolis, April, 1994, p. 12.

62. "Hudson Institute: Shaping the Future," Hudson Institute brochure, 1995.

63. *Hudson Institute 1994: Report & Prospectus*, Indianapolis, Hudson Institute, Inc., 1994, p. 14.

64. Ibid, p. 24.

65. Ibid, p. 19.

66. Ibid, p. 18.

67. Mahoney, Richard J. "Punitive Damages -- Once is Enough," *Contemporary Issues Series no. 72*, Center for the Study of American Business, May, 1995.

68. Mahoney, Richard J., "Punishment Without End," *The Washington Post*, June 15, 1995, p. A21.

69. CSAB: Center for the Study of American Business, 1994 Annual Review, p. 25.

70. Middleton, Martha, "A Changing Landscape" *ABA Journal*, August, 1995, p. 56.

71. Glastris, Paul, "Frank Fat's Napkin: how the trial lawyers and the doctors! sold out to the tobacco companies" *Washington Monthly*, December, 1987, p. 19-25

72. Enda, Jodi, "Tobacco lobby is targeting Pa. on liability," *The Philadelphia Inquirer*, September 26, 1990, p. B1.

73. Rushford, Greg, "Where There's Cigarette Smoke, There's Fire, Covington Finds," *Legal Times*, April 16, 1990, p. 1; Enda, Jodi, "Tobacco lobby is targeting Pa. on liability," *Philadelphia Inquirer*, September 26, 1990; Lehrin, Andrew, "Lobbying firm confirms layoffs aimed at cutting overhead," *Philadelphia Business Journal*, August 2, 1990,; Bumsted, Brad, "Experts differ on effect of product law on tobacco firms," *Public Opinion* (Chambersburg, Pennsylvania), June 23, 1990.

74. Gannon, John, *Tort Deform -- Lethal Bedfellows*.

75. Camp, Charles B., "Business interests expect victory on tort reform bills" *The Dallas Morning News*, February 20, 1993, p. 1A.

76. "Lobbyists: Assessment of PM, TI and Industry Lobbyists - dealing with weaknesses," Smoking Gun Memos.

77. Texas Ethics Commission Disclosure Database: Registered Lobbyists, Their Employers and Clients of Their Employers, 1993-1995.

78. "Contract Lobbyists," Smoking Gun Memos; Texas State Ethics Commission Disclosure Database: Registered Lobbyists, Their Employers and Clients of Their Employers, 1993-1995.

79. "APCO Associates Inc.: A GCI Company," APCO promotional brochure.

80. Page, Peter, and Zegart, Dan, "Tobacco, asbestos firms quietly move to limit suits," *The Times* (Trenton, New Jersey), June 12, 1994, p. 1.

81. Ibid.

82. Ibid.

83. *The Yellow Sheet*, December 30, 1993.

84. Letter from William R. Jones, Jr., Jones, Skelton and Hochuli, Attorneys-at-Law, to unidentified client, July 8, 1993. Letter obtained by Arizona group Fairness and Accountability in Insurance Reform.

85. Editorial, *Arizona Daily Star*, March 28, 1994.

86. "Arizona Businesses Declare The Time Has Come 'To Fix the System And Protect Our Rights,'" Press Release, *people for a FAIR legal system...*, February 1, 1996.

87. Ibid.

88. Political Committee Campaign Finance Report, State of Arizona, For Period of November 29, 1994 thru December 31, 1995, People For A Fair Legal System, ID#01947, Schedule A.

89. "Lobbyists: Assessment of PM, TI, and Industry Lobbyists - dealing with weaknesses," Smoking Gun Memos.

90. Author's telephone interview with Russ Herman, February, 1996.

91. Ibid.

92. "<u>Constituents</u>: What groups are we working with -- direct contributions and event sponsorships," Smoking Gun Memos.

93. Telephone interview with Charles Cromer, February, 1996.

94. Telephone interview with state Sen. Roy Cooper, February, 1996.

95. Simpson, Cam, "Lawsuit-reform bill may favor tobacco firms" *Indianapolis News*, April 22, 1995, p. B1.

96. Kueterman, Greg, "General Assembly Dominates Lawyer Headlines in 1995," *The Indiana Lawyer*, December 27, 1995, p. 1.

97. Ibid.