



Corporate Accountability

The Power of Citizen Access to the Courts

By Joan Claybrook

Corporate America has been attacking our civil justice system in state legislatures and in Congress for the past 15 years, and it is easy to understand why: because the court system equalizes the relationship between consumers and the powerful institutions that control the marketplace. It allows ordinary citizens to hold corporations accountable and sometimes even forces faulty products off the market when our government regulatory system fails.

Consider the recent revelations about the defects in Firestone tires and Ford

Explorers that are now linked to 148 deaths and more than 500 injuries in the United States. Without the ability of citizens to seek justice in the courts, these defects might never have come to light. Ford and Firestone are paying millions to settle the claims of their innocent, unsuspecting customers, many of whom were killed, paralyzed or otherwise maimed in rollover crashes caused when defective tires lost their tread.

Unfortunately, the federal government missed the warning signs. The defects came to light because crash victims sued Ford and Firestone beginning in the early 1990s and their lawyers documented the problems, though many of the facts remained sealed under secrecy agreements insisted upon by the companies. Last year, when an enterprising TV reporter in Houston, Anna Werner (of KHOU-TV), began investigating the death of a colleague in a rollover crash, she tracked down several lawsuits that

documented close to 30 deaths and put the pieces together. We have since learned that Ford and Firestone covered up the safety defects for a decade. These revelations from lawsuits outraged the public, forced a recall of bad tires, and sparked congressional hearings and then a law requiring new safety standards and enforcement.

This is our civil justice system at work and its human face. And that's why big corporations want to change it. Public Citizen believes a strong civil justice system is one of the pillars of our society and must be preserved at all

costs. We have fought for 30 years to retain the rights of citizens to seek justice in the courts. The benefits to society are manifold: Victims are compensated; misconduct that causes injury is deterred; injuries are prevented because dangerous products are removed from the marketplace or redesigned; wrongdoers are punished; and dangerous practices and defective products are exposed. Finally, the system provides a forum for the ethical growth of the law, where the responsibility of the perpetrators and respect for human life can be sustained.

Many Americans don't remember from their school years that the British Stamp

Act completely closed down the colonial civil court system, and that the Revolutionary War was a revolt against this and other the oppressive and arbitrary restrictions imposed on the colonies by the British Parliament and King George III. The colonies fought for common law rights and a fair, open and independent court system in which untainted citizen juries would be the true decision-makers. As a result, the U.S. Constitution and most state



Donna Bailey, 44 of Corpus Christi, Texas, was left paralyzed from the neck down after her Ford Explorer, equipped with Firestone tires, rolled over and crashed. With her attorney, C. Tab Turner of Little Rock, Ark., she settled a lawsuit with Ford Motor Co. and Bridgestone/Firestone Inc. The recall of 6.5 million Firestone tires led to a new auto safety law in 2000. (Photo by Adrees Latif of Reuters)

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constitutions assure the right to trial by jury as an essential element of democracy.

Securing justice is one of the greatest achievements of humans. It is the ultimate goal of our system of law. But at the beginning of the 21st century we must acknowledge that many Americans question whether our system of justice is fair. Many believe that most citizens do not have an equal opportunity in legal forums. Faith in the law as a power equalizer is diminished when it does not serve that purpose for most people.

Negative public attitudes toward the law in recent years have been framed by several potent forces: corporate public relations and legislative campaigns seeking to limit access to the courts by wrongfully injured citizens, and the domination of our legal system by wealthy corporations.

Complaints about our legal system often emphasize that America has too many lawyers. This concern is misplaced. In fact, per capita, we have about the same number of litigators and other lawyers as other industrial nations. We do have too many lawyers working for Exxon, General Motors, Dupont and IBM. But as the American Bar Association has pointed out, we have too few serving those who need help the most: the poor, victims of negligence, racial discrimination and violence, and citizens who are cheated by their bank, landlord, medical system or pension. This imbalance results from the fees corporations pay for legal representation that usually price consumers' lawyers out of the system.

The poor are under-served by the limited funds of poverty lawyers. And for average Americans, access to law is not affordable. Only injured consumers with a potent case who are represented by trial lawyers on the basis of contingency fees (that is, lawyers don't get paid unless they win) can bring suits against wealthy corporations. Powerful corporate entities resent the authority accorded even to the small number of injured citizens willing to challenge corporate decisions, force the disclosure of embarrassing information and secure financial judgments for irreparable harm. But unable to denigrate average citizens who sue, Big Business has made the legal profession the target of its ridicule.

Beginning in the mid-1980s, hundreds of manufacturing and insurance companies pooled their resources and launched a coordinated and sustained attack on the civil justice system. They have spent hundreds of millions of dollars to undermine the authority of the courts and juries as well as the credibility of trial lawyers. Trial lawyers are portrayed as greedy sharks, even though most do not earn nearly the sums paid to the corporate chiefs

who initiate the attacks. This cold, calculated public relations strategy has had an impact. Republican pollster Frank Luntz in recent years told his clients that "it's almost impossible to go too far in demonizing lawyers" in terms of what the public will believe as a scapegoat for societal problems. Corporate public relations firms also pummel journalists with fallacious anecdotes about unjust

jury verdicts and "frivolous" lawsuits. They form industry front groups such as "Citizens Against Lawsuit Abuse" — which has received substantial funding from the tobacco industry — to create the illusion of citizen support for stripping consumer rights. Never mind that no citizens are allowed to be members or that far more lawsuits are filed by businesses against other businesses than by citizens against businesses. Tough-minded judges

also are under assault by corporate groups and are targeted for defeat when running for re-election. Other judges are wined and dined at seminars focused on the cost of legal decisions to defendant companies.

This corporate campaign intersects with and influences other developments in our legal system. The appointment of judges has been politicized, sometimes resulting in the best legal minds opting out, and political compromises too often result in neutered judges. The jury pool of citizens is more likely to be cynical about the legal process, undercutting the concept of independent-minded jurors. State lawmakers, influenced by targeted lobbying campaigns and with pockets full of campaign cash, have regularly overridden key precepts of common law. Legislatures have chronically neglected to fund the courts adequately so that record-keeping systems are now archaic, the waiting list for trial often is years long and many courthouses are overcrowded and in a state of decay.

There is a societal danger in the imbalance in the application of legal resources, because it invites overreaching that undercuts the entire society. Law firms with hundreds of lawyers routinely are hired to protect monopolies; raid the U.S. Treasury with endless obscure tax breaks, loopholes and subsidies; quash innovative smaller companies; create virtual private legal systems that force consumers to give up their legal rights and engage in mandatory arbitration over credit, health care, employment and franchise disputes; and harass citizen groups with "strategic lawsuits against public participation" (SLAPP suits). The latter are libel suits such as the meat industry's case against talk show host Oprah Winfrey that are basically frivolous but can bankrupt citizen organiza-

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tions that criticize corporate behavior.

The other danger is that injured citizens will not get their day in court because public attitudes and huge campaign contributions facilitate corporate-written legislation that makes legal redress too costly or difficult. Since the outset of this corporate onslaught, Public Citizen has been the leading voice in the public interest community to stop the enactment of federal legislation pushed by hundreds of huge companies to preempt state liability laws. This federal legislation is designed to overturn pro-consumer state laws so that companies won't be held accountable for reckless misconduct that injures consumers or defrauds them.

Public Citizen has played an instrumental role in stop-

ping federal bills limiting liability for faulty products, asbestos, tobacco and Amtrak crashes. We also helped stop bills that would have attacked the ability of consumers to bring class action lawsuits, limited punitive damage awards and instituted a no-fault auto insurance scheme that will harm innocent crash victims.

If such federal legislation had been enacted in the 1990s, we might never have learned about the Firestone/Ford Explorer defects, and hundreds of families who have suffered grievous losses would remain uncompensated. The company documents that reveal the true story would still be buried from view. And the auto and tire companies would not be madly redesigning their vehicles and tires to reduce the likelihood of rollover crashes and tragic injuries. [IPCI](#)