



No Justice for the Injured

Big Business Is Funneling Campaign Cash to Judges Who Allow Corporate Wrongdoers to Escape Accountability

Billy Corriher May 2013

Introduction and summary

At the turn of the 20th century, as America shifted from an economy based on farming to an industrial economy fueled by large corporations, the reformers of the progressive era sought to ensure that ordinary workers were not exploited or abused by their increasingly powerful employers in the new economy. On-the-job accidents became much more frequent as factories rapidly replaced farms and railroads were built to span the continent. Reformers and labor advocates fought for injured workers in state legislatures and courtrooms.¹ The judiciary had always had a reputation for favoring corporate defendants,² but reformers lobbied to expand tort liability and abrogate employers' legal immunities. Their successes protected injured workers and encouraged employers to prevent workplace accidents.³

The reformers held constitutional conventions to enshrine these protections in state constitutions. States across the country, including Ohio and Pennsylvania, saw constitutional amendments that prohibited state legislatures from limiting lawsuits against corporations or other negligent actors.⁴

This expansion of tort liability changed the American economy. The progressive-era advancements brought safety standards to the workplace and the consumer market. Unfortunately, a reform championed in an earlier era—the shift from an appointed to an elected judiciary—is now jeopardizing the expansion of tort liability that protected consumers and employees.

America is the only country in the world that elects its judges, and this unique feature of our government has allowed corporations to influence the law through judicial campaign contributions. The ability of ordinary Americans to find justice against powerful corporations may prove to be a historical anomaly rather than an irreversible progression of the law. For much of the 20th century, the courthouse doors were open to injured employees and consumers, but now these doors are being closed once again.⁵ Corporate-funded judges and legislators have distorted the law to keep corporations and other defendants from being held accountable.⁶ Over the past few decades, big business has spent millions of dollars to elect judges who voted to limit Americans' right to sue negligent corporations.

Those who have been injured or wronged by the mistakes of someone else—a negligent hospital, an unsafe employer, or a callous insurance company—are finding it harder to hold these wrongdoers accountable in court. Injured plaintiffs are facing laws that have been distorted by campaign contributions from big business to state legislators and judges. To illustrate the impact that this corporate campaign cash is having on the law, the appendix to this report includes summaries of cases from the six state supreme courts that have seen the most money in their judicial elections from 2002 to 2012. The data include 1,499 cases in which an individual sued a health care provider or a business for an injury to their person or property. In 70 percent of these cases, the courts ruled against the individual and in favor of the corporate defendant.⁷ The trend toward pro-corporate rulings seems to be growing more pronounced. From 2007 to 2012 the Ohio Supreme Court ruled for defendants in 80 percent of the cases studied.⁸ The Texas and Alabama high courts, where big business has had great success in stacking the deck against injured plaintiffs, ruled for the defendants in 80 percent of the cases in 2011 and 2012.⁹

One Texas plaintiff, Connie Spears of San Antonio, ran up against the state's stringent medical-malpractice laws when she sought to hold a hospital accountable for failing to diagnose a blood clot, a problem she had previously experienced.¹⁰ The delay in discovering the clot led to the amputation of both of her legs. It took years for her to find a lawyer willing to take the case, due to Texas' defendant-friendly laws, and once she did, she could not find an expert witness who met the state's standards.¹¹ Spears says that negligent medical care has impacted her family and "ruined all of our lives,"¹² but she could not hold anyone accountable in Texas.

This report begins with a history of the effort by big business to limit liability. This effort began in state legislatures, and after some of the resulting statutes were struck down as unconstitutional, the battle moved to state supreme courts. This history includes a discussion of the news media's role in convincing Americans that limits on liability were necessary because of a lawsuit crisis in America. The report then offers a discussion of seven state supreme courts—in Texas, Alabama, Ohio, Michigan, Mississippi, Wisconsin, and Louisiana—where big business has succeeded in electing judges who voted to limit liability for wrongdoers. In discussing each of these courts, this report tells the stories of injured plaintiffs who were denied relief by judges whose campaigns are funded by big business and proponents of limiting liability.

Legislators and judges in states around the country have limited the liability of negligent persons and corporations in the name of reform—a movement funded

by big corporations that goes by the innocuous name of “tort reform.” (This report will generally not use this term. Instead, it will refer to the modern tort-reform movement as an effort to limit liability or cap damages.) This movement was funded by large corporations that were frequently the target of lawsuits such as insurance companies and tobacco companies.¹³

Torts are wrongs committed by a person or entity that are recognized by courts as justifying monetary compensation. Torts arise when someone’s negligent behavior causes a physical injury or financial loss to another person, who then has the option to file a lawsuit against the responsible person or entity. Those guilty of violating tort rules must pay for their negligence through monetary compensation. Tort law makes society safer by encouraging corporations and others to exercise caution. It allows injured patients, consumers, and employees to recover from negligent actors that injure them. In these lawsuits, a jury traditionally decides whether the defendant is liable for the damages and allots the amount of damages.

The founders of our country enshrined a right to a jury trial in the Bill of Rights.¹⁴ John Adams said that without representative government and the right to a trial by jury, citizens have “no other indemnification against being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine and hounds.”¹⁵ Many state constitutions include strong language protecting the right to a jury trial and the right to a legal remedy for wrongs committed by others. But in many of these same states, the right to a jury trial is being rendered meaningless by laws that restrict the right to sue and by judges who received millions of dollars from big business to uphold these laws.

The Center for American Progress is a nonpartisan research and educational institute dedicated to promoting a strong, just, and free America that ensures opportunity for all. We believe that Americans are bound together by a common commitment to these values and we aspire to ensure that our national policies reflect these values. We work to find progressive and pragmatic solutions to significant domestic and international problems and develop policy proposals that foster a government that is “of the people, by the people, and for the people.”

Center for American Progress

