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## **GROUNDBREAKING REPORT FORCES BUSINESS LOBBYISTS TO ADMIT PUBLICLY THAT "TORT REFORM" WON'T REDUCE INSURANCE RATES**

Over the last two weeks, spokespeople for national "tort reform" organizations have admitted in published statements that lawmakers who enact "tort reform" should not expect insurance rates to drop. These comments come following publication of CJ&D's new study, *Premium Deceit -- the Failure of "Tort Reform" to Cut Insurance Prices*. The report is an exhaustive look at the impact of "tort reform" on nationwide insurance costs over the last 14 years and finds that enactment of tort law restrictions has not reduced insurance costs or rates.

According to Joanne Doroshow, CJ&D Executive Director and co-author of *Premium Deceit* (along with J. Robert Hunter), "Business lobbyists have for years insisted that the way to cut insurance premiums for businesses and professions is to place restrictions on the rights of consumers to sue and hold wrongdoers accountable in court. They have lobbied lawmakers and bombarded the media with this phony message. These new remarks represent a shocking reversal of the long-held position of those seeking corporate immunity laws, and removes one of the primary economic justifications for laws that limit consumers' legal rights," said Doroshow.

Specifically, Sherman Joyce, president of the American Tort Reform Association (ATRA), when asked to respond to *Premium Deceit*, told *Liability Week* (July 19, 1999), "We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates." Victor Schwartz, ATRA's General Counsel and one of the principal "tort reform" lobbyists in Washington on behalf of business interests, told *Business Insurance* (July 19) that while he thought some severe "tort reform" measures could reduce insurance rates, he said when pressed that, "[M]ore importantly ... many tort reform advocates do not contend that restricting litigation will lower insurance rates, and I've never said that in 30 years." (emphasis added.) Further backing-down, Mr. Joyce followed with the comment, "'We think the real focus (of tort reform) should be on (restricting) the payment of punitive damages,' rather than on lowering insurance costs."

Consumer advocate Ralph Nader said, "Now, thanks to Victor Schwartz and Sherman Joyce, the insurance industry will no longer be able to credibly claim that restrictions on tort law will lower insurance premiums for consumers. Their real agenda emerges with

great clarity -- that restrictions on tort law are pursued for the purpose of achieving greater immunity from responsibility by their reckless corporate paymasters."

Premium Deceit lists numerous examples, both past and present, of business lobbyists making, and lawmakers relying on, promises that "tort reform" will reduce insurance costs. For example, in 1986, lobbyist Peter G. Strauss of the Alliance of American Insurers, testified in New Jersey that "liability insurance rates would go down" if the New Jersey legislature enacted a cap on damages, repealed the collateral source rule and eliminated joint and several liability. Among more recent examples are:

In Illinois, the legislature passed severe "tort reform" in 1995 (although the law was declared unconstitutional in 1997) in part, according to the law, "to protect the availability of affordable liability insurance."

In the spring of 1999, Florida enacted an extensive "tort reform" package. Florida's business lobbyists frequently cited the insurance argument before the bill passed. For example, one witness testifying for the business community argued that "abolishing joint and several liability completely would ... amount to almost \$67 in savings per Floridian for insurance premiums." In addition, ATRA's Sherman Joyce participated in a Tallahassee news conference on October 28, 1997, releasing a study supposedly indicating that the legal system "costs Floridians \$655 per year."

In its 1998 report *An Accident and a Dream*, the Public Policy Institute -- the research arm of the Business Council of New York State which is a major force behind "tort reform" legislation under consideration in New York -- says, "everyone pays for [large] awards, through ... higher insurance premiums," and announced in a March 1998 press release that if New York enacted certain tort reforms, "New Yorkers would save roughly \$800 million a year, or roughly 6 percent, in liability premiums and self-insurance payments."

According to Doroshow, "Figures such as those cited in Florida and New York are public relations gimmicks, sometimes labeled a 'tort tax' or 'lawsuit tax.' ATRA's web page, as well as those of other corporate-backed groups like Citizens for a Sound Economy, similarly complain about the 'costs' of the tort system. Yet all of these calculations are derived from an estimate of insurance costs, as stated explicitly in the New York report *An Accident and a Dream*. They argue that reductions in those insurance costs can only occur through enactment of laws restricting victims' rights. We now know that this is clearly wrong.

"Consumer groups have said for years that the largely unregulated and anti-competitive insurance industry is responsible for the premium-gouging which businesses and professionals experience. The solutions lie with the insurance industry -- not the civil justice system. But now, don't just take our word for it. Listen to Sherman Joyce and Victor Schwartz."

**PREMIUM DECEIT  
THE FAILURE OF "TORT REFORM"  
TO CUT INSURANCE PRICES**

**EXECUTIVE SUMMARY**

From the mid-1980s until today, the nation's largest businesses have been advancing a legislative agenda to limit their liability for causing injuries. One of the principal arguments on which they rely is that laws that make it more difficult for injured people to go to court (i.e., "tort reform") will reduce insurance rates. This report analyzes these claims, and concludes they are invalid.

The "tort reform" movement largely originated in the mid-1980's while the nation was suffering through a severe "liability insurance crisis." Small businesses, doctors, non-profit groups and others were hit with dramatic increases in insurance premiums, reduced coverage and arbitrary policy cancellations. The situation received extensive media attention, such as Time Magazine's 1986 cover story entitled, "Sorry, Your Policy is Cancelled."

The insurance industry and other large corporations blamed the crisis on the legal system and lobbied extensively for what they called "tort reform" --laws that restrict the rights of injured consumers to sue and obtain compensation from corporate lawbreakers and other wrongdoers. They claimed that enactment of "tort reform" would cause insurance rates to stabilize and even fall.

Great pressure was brought to bear on state legislatures around the country to restrict the rights of innocent victims to recover for their injuries and to hold wrongdoers accountable in court. Many states succumbed to this pressure and passed "tort reforms." Moreover, states have continued to adopt these laws. As recently as the spring of 1999, Florida passed an extensive "tort reform" package. And some New York lawmakers are considering a similarly broad proposal.

This study -- the most extensive review of insurance rate activity in the wake of the liability insurance crisis ever undertaken --was designed to test the impact on liability insurance rates of "tort reforms," specifically those that were passed by state legislators (or voters by ballot initiative) in reaction to the liability insurance crisis of the mid-1980s, and in the years since.

We obtained data on insurance rate and loss cost movement in every state from 1985 through 1998. We then segregated the states into three categories: states that enacted the fewest number of tort law changes over the period; states that passed a mid-range level of tort law limits; and states that enacted the most "tort reform."

The hypothesis we tested was simple: if tort law limits succeed in reducing insurance costs for consumers of insurance, that should be evident in the trends of insurance costs. As tort law limits get more severe, the trends in rates and underlying loss costs should be less.

We tested this hypothesis for the lines of insurance subject to general tort reform and to product liability and medical malpractice separately, since states often enact separate tort law restrictions to be applied just in those areas.

We found that the trends in rates/loss costs do not support the hypothesis that "tort reform" has succeeded in holding down insurance costs or rates. Despite what "tort reform" proponents promised lawmakers, tort law limits enacted since the liability insurance crisis of the mid-1980s have not lowered insurance rates in the ensuing years. States with little or no tort law restrictions have experienced the same level of insurance rates as those states that enacted severe restrictions on victims' rights.

The "liability insurance crisis" of the mid-1980s was ultimately found to be caused not by legal system excesses but by the economic cycle of the insurance industry. Given large rate increases and cut backs in coverage, the insurance cycle soon turned again and prices began to fall. The nation has enjoyed a relatively "soft" insurance market for over a decade now --with rates of liability insurance not only stable but down.

Just as the liability insurance crisis was found to be driven by the insurance underwriting cycle and not a tort law cost explosion as many insurance companies and others had claimed, the "tort reform" remedy pushed by these advocates failed. As the findings of this report confirm, legal system restrictions are based upon a false predicate. "Tort reforms" do not produce lower insurance costs or rates.