

Businesses spend millions of dollars each year defending themselves against lawsuits, many of them frivolous.

Home Depot is now one of America's largest and most successful companies, but Bernie Marcus, who cofounded Home Depot back in 1978, says his business could never have gotten off the ground in the current legal climate. That is thousands of jobs that would have never been created, millions of products never sold, and prices that would never have been introduced for the benefit of consumers.

Contrary to popular perception, small businesses, which are the engine of economic growth in our country, are the ones which are hardest hit by the lawsuit industry—not the large corporations. Small businesses take in 25 percent of America's business revenue but they bear 68 percent of the business tort costs.

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They spend a staggering \$88 billion a year on legal fees—\$88 billion that could be used to hire more workers, create more jobs, expand their businesses, or develop new products and services.

Many small businesses can't afford the legal burden, so they close up shop and jobs are lost—and the economy overall suffers.

Clearly, it is time for reform. We simply cannot afford the status quo. The cost of doing business in America keeps going up while respect for our legal system goes down.

That is why today, as a first step, we are tackling class action. We should consider focusing on other areas of lawsuit abuse, including medical liability, asbestos, and bankruptcy—and in due time we will do just that. But we are beginning with class action to help those injured by negligence who often receive little or nothing while their attorneys pocket millions.

Class action serves an important purpose in our justice system. We all know that. Class action lawsuits allow plaintiffs whose injuries are not big enough to justify the legal expense individually to combine their claims into one suit against a common defendant. This is an important and valuable tool to keep unscrupulous companies honest and to compensate legitimate victims.

But the system has gotten off track. Opportunistic attorneys are distorting the process to generate excessive attorney fees at the expense of the injured plaintiffs. Take, for example, a case in my home State involving faulty plastic pipes.

Throughout the 1970s and the 1980s, 6 million to 10 million new homes and apartments were fitted with the plastic piping. PB pipes, as they are known, were generally considered cheaper and more durable than either copper or galvanized steel systems. They were especially popular in the Sun Belt where we were experiencing a huge housing

boom. Before long, however, the pipes and the fittings began to fail, causing leaks and property damage.

A class action suit was filed on behalf of the homeowners who were stuck with these defective pipes. After extensive litigation, the lawyers reached a deal. The homeowners were eligible to receive less than 10 percent of the total settlement fund—less than 10 percent. Meanwhile, the plaintiffs' attorneys negotiated for themselves a \$45 million payday—the equivalent of \$2,000 per hour. This is just one of many examples of consumers getting a fraction of the total settlement, while the lawyers got millions.

In fact, the Class Action Fairness Act enumerates a consumer class action bill of rights which will put an end to these unfair compensation packages. Under the Class Action Fairness Act, lawyers' fees for coupon settlements must be based either on the value of the coupons that are actually redeemed or the hours actually billed in prosecuting the class action. The consumer provisions will also require settlement deals to be written in plain English so plaintiffs know what is being negotiated and can make informed decisions about how to proceed.

Second, the bill before the Senate will help end the phenomenon of forum shopping. Aggressive trial lawyers have found there are a few counties that are what is known as lawsuit friendly. These elected State court judges are quick to certify a class action and juries are known to grant extravagant damage awards.

The same defendant can face copycat cases in different States, each granting a different result. These counties may have little or no geographic relationship to the plaintiffs or the defendant, but the trial lawyers know that simply the threat of suing in these counties can lead to large cash settlements. One study estimates that virtually every sector of the U.S. economy is on trial in only three State courts.

The Class Action Fairness Act moves those large nationwide cases that genuinely impact the interstate commerce to the Federal courts where they belong. These are commonsense reforms that will bring fairness back to the system.

For these reasons, the Class Action Fairness Act enjoys strong bipartisan support. It was reported out of the Senate Judiciary Committee with a bipartisan majority. I am confident if we continue working together to pass a clean bill without amendment, it will pass the House of Representatives quickly and be ready for the President's signature. Class action is an important tool of justice, but it is a tool that has been badly abused. Class Action Fairness Act will bring rationality to the system which will benefit the truly injured, keep America competitive, and restore the public respect for the law.

I yield the floor.

Mrs. BOXER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ORDER OF PROCEDURE

Mrs. BOXER. Madam President, may I ask what is the order at the current time?

The PRESIDING OFFICER. Morning business, with Senators permitted to speak for up to 10 minutes each.

Mrs. BOXER. Does one have to ask unanimous consent to go past the 10 minutes?

The PRESIDING OFFICER. Yes.

Mrs. BOXER. I ask unanimous consent I be able to speak for up to 20 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### CLASS ACTION LAWSUITS

Mrs. BOXER. Madam President, Senator FRIST came to the Senate to make some opening remarks about the class action bill that will be before the Senate. There will be a very good debate on this bill. I will make a couple of points.

The Senator said every 2 seconds a lawsuit is filed. I have no reason to doubt his number, but I wonder if he has looked at who is filing the lawsuits. The last time I looked, it was mostly one business suing another business. So before we come to the Senate and say we have to do something about the class action lawsuits, saying every 2 seconds a lawsuit is filed gives the wrong impression. We are going to get the exact numbers, but I make that point.

What we will find among colleagues, regardless of party, we all want to make sure these lawsuits are fair and that they are heard in a fair way. It appears when a class action lawsuit winds up in a Federal court, the judge, on many occasions, if not most occasions, refuses to hear it because the plaintiffs come from so many different States. I will give an example of what these lawsuits are about.

When we talk about lawyers, we talk about fees, we talk about costs the lawyers have, or the time they have. We are overlooking the main point, which is: what are these class action lawsuits about? I will talk about a couple of these lawsuits because we need to put a human face on what they are.

Rob Sanders of Maryland explained how his daughter was killed, as were other children, by a deployed airbag in a Chrysler minivan. For years, consumers have pursued class action cases against Chrysler to force the company to replace existing airbags in such vehicles with others that deploy less rapidly and do not pose a safety risk to

the car's occupant. As someone who is small in stature, I can say the automobile companies make these airbags to protect people who are much larger and much heavier, and much taller than appropriate for children. We have seen children killed by these airbags.

We all want airbags that work, regardless of our weight, our height, or stature. A class action was blocked in a Louisiana Federal court because the judge threw up his hands. But in Oklahoma—as we all know, that is a conservative State—the State court is proceeding to look at this even though the company has been working for years to block it. We are talking about life and death. We are talking about real victims.

Let's talk about the ability to make a living. Georgie Hartwig of Washington State is a former Wal-Mart employee who was cheated out of overtime pay. This is a common practice, unfortunately, at many of the company stores. Her class action case is being heard in State court. Three Federal courts have refused to hear such Wal-Mart cases, whereas five State courts have allowed them.

I am hopeful as we move this bill forward, we will ensure that at least some court will hear these important cases. They involve real people. I am sure Georgie Hartwig of Washington State and her colleagues at Wal-Mart have to raise a family and pay the rent. If we have a system that simply shuts the courthouse door, be it a State courthouse or a Federal courthouse, we are not fulfilling our job to make sure people get justice, they get it expeditiously, and it is done fairly.

Shelly Toliver is a firefighter from Connecticut. These are the people we are talking about here—Americans. Shelly Toliver, a firefighter from Connecticut, described how she brought a State class action suit against Credit Acceptance Corporation of Michigan for cheating her and other consumers out of their vehicles in violation of Connecticut law, destroying their credit ratings in the process. We all know what it is to get a bad credit rating by mistake. It is terrible. Ultimately, the class members had their purported debt to the company wiped out and their bad ratings cleared because they were able to get their case heard.

It goes on and on. I hope as we get through this bill we will be honest with the American people regarding whose rights are at stake. We are supposed to be here for the rights of the men and women of this country, the families of this country. The corporations, which are rather faceless, I support when they do the right thing, but when they do not do the right thing, when they wrong a firefighter, if an automobile company does not do what they should to protect children, there ought to be justice. That is all we are saying.

Are there abuses? Yes. Should we resolve them? Yes. I am very happy to do that. It is true, we have abuses everywhere. We should fix those abuses.

We have to be careful we are being sincere. There is one colleague who has been very strong on capping pain and suffering, but when it happened in his own family, he went for the gold. So let's be careful. The American people are watching. If we say we ought to cap pain and suffering for our constituents—forget about it, one size fits all. This is not class action, but these are other kinds of cases this Republican Senate is coming after: one size fits all. Let's cap it it is killing us; it is killing the country.

I go to the supermarket every week. No one comes up to me and says, please, please, do something about the filing of lawsuits when their child died in a hospital. What they will say to me is, make sure there is fairness for victims.

Let's get together and do the things that have to be done so that the people who get the benefit are our constituents. Do not close the courthouse door to firefighters, moms and dads, who are working for justice in their lives.

#### AN INCOMPLETE BUDGET

Mrs. BOXER. The President has sent down his budget. We are going through it now to see what it means for our State. But this is quite a budget. This is a budget that does not include the costs of the war in Iraq. This is a budget that does not include the costs of the war in Afghanistan. This is a budget that does not show the true costs of making the tax cuts permanent. This is a budget that does not show the costs of what I call anti-Social Security, going into personal accounts, which is an enormous multitrillion dollar cost.

So you have a document which is, on its face, incomplete. That is the best way I can put it: incomplete. Other people might use another word for it, but I will be charitable and say it is incomplete. Why can't the President show the true costs? Because he could not hold up his head if he put the true costs in there. We would be looking at deficits that are ruinous. The truth is, the deficits are ruinous.

When President Bush took over, he had a surplus as far as the eye could see. He turned it into a deficit in 15 minutes. He said the tax cuts would be so great that we would have economic growth and we would suddenly have a balanced budget. It did not happen.

Let me tell you what else is not in this budget. Where is the money from the Iraqi oil that was supposed to be coming our way? On March 27, 2003, not that long ago, this is what Paul Wolfowitz, the Assistant Secretary of Defense said, in congressional testimony, sworn to tell the truth:

The oil revenues of Iraq could bring between \$50 and \$100 billion over the course of the next two or three years. . . . We're dealing with a country that can really finance its own reconstruction, and relatively soon.

Let me repeat that. A Bush administration spokesperson, very high up in the Defense Department, said:

The oil revenues of Iraq could bring between \$50 and \$100 billion over the course of the next two or three years. . . . We're dealing with a country that can really finance its own reconstruction, and relatively soon.

Well, here it is, folks, it is 3 years later, and not a penny of revenue is coming into our budget to help us, and the whole cost of the Iraq war is outside the budget—a disaster.

Here is another claim, by White House spokesman Ari Fleischer:

Iraq, unlike Afghanistan, is a rather wealthy country. Iraq has tremendous resources that belong to the Iraqi people. And so there are a variety of means that Iraq has to be able to shoulder much of the burden for their own reconstruction.

Where is the revenue in our budget? Not a dime, not one slim dime. They are not even talking about making these costs into loans against future oil revenues. And in the meantime, what are the American people told by this President and his budget? What are the veterans told? Oh, we are cutting back on veterans health care. Can you imagine? We are almost at 11,000 wounded, and this President's budget says, You are going to have to pay more for your pharmaceuticals, \$250 to join, and you have to pay more. Let me tell you, a lot of us are going to stop that. Let me tell you, a lot of us are not going to let that happen.

The people coming home from Iraq, half of them are very seriously wounded—thousands and thousands. Some estimates are that a third of them need mental health care. And this budget cuts veterans health. Wrong. That is not going to happen. It is unacceptable. I think it is unacceptable to the American people.

I ask my constituents if they believe we ought to be doing more for veterans or less for the veterans or the same as we did last year. I know—and I have not taken a scientific poll—they would say: Senator, you give them what they need.

The President says to the Iraqi people: As long as it takes. Whatever it is. Whatever it costs. I want to say to the veterans: Whatever it takes, however long it takes for you to get on your feet, we will be there.

We have the President eliminating a program where the Federal Government gives States funding to incarcerate illegal immigrants who have committed crimes—cut, gone, finito, finished—eliminating \$300 million. We call it SCAAP. How can a President, at this time in our history, where we are guarding our borders, where we are concerned about who is coming in, lay all of that on the border States? This is wrong. It is unacceptable.

How about this: The Bush budget slices law enforcement grants to States from \$2.8 billion to \$1.5 billion, while the President claims he is increasing homeland defense.

I have a message for the President, in a nice, respectful way: It is our local law enforcement people who are protecting our citizens in every capacity. They are the bottom line of homeland defense.