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## Congress of the United States

### House of Representatives

Washington, DC 20515-0306

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## ENSURE FAIR ATTORNEYS FEES

Dear Colleague:

We have all considered the problem of excessive attorneys fees that eat up most – or sometimes all – of the benefits a plaintiff is supposed to receive from an award or settlement. Perhaps the most egregious example I can think of is the tobacco settlement, where some attorneys were paid billions of dollars, in some cases for relatively little work.

I believe it is only right to place a reasonable limit on attorneys fees to ensure that plaintiffs are protected, and invite you to join me as a cosponsor of legislation I have introduced that will accomplish this goal. H.R. 1926 is the companion bill to S. 887, the Intermediate Sanctions Compensatory Revenue Adjustment Act (ISCRAA), which was introduced by Senators Kyl and Cornyn.

ISCRAA would modestly limit attorneys fees only in lawsuits that result in judgments of over \$100 million. State courts have established processes in which they determine reasonable hourly rates for attorneys fees, and ISCRAA would permit attorneys fees as high as 500% of these reasonable hourly rates. It is difficult to argue that any risks taken on by attorneys could exceed 500% of an hourly rate independently determined by an objective state court.

In addition to protecting plaintiffs, ISCRAA will reinforce the fiduciary relationship between attorney and client. Moreover, in the case of the tobacco settlement, limiting attorneys fees will increase the amount of the settlement received by the states by approximately \$9 billion.

I hope you will consider joining with me in this effort to ensure fair attorneys fees. Please contact me or Katharine Mottley of my staff (5-2190 or [katharine.mottley@mail.house.gov](mailto:katharine.mottley@mail.house.gov)) to cosponsor or to request additional information.

Best regards,

A handwritten signature in black ink, appearing to be 'J. D. Hayworth', written over a large, stylized flourish.

J. D. Hayworth  
Member of Congress

# A Deal Is Hatched

The Democratic Party's willingness to shill for America's trial lawyers is legendary. But the smelly little secret on Capitol Hill is that the trial lawyers would not wield the unchallenged power they do without a handful of Republican fellow travelers.

No better example exists than last Thursday's Senate Finance Committee defeat of an amendment de-

*A few Republicans do trial lawyers a big favor.*

signed to enforce reasonable-fee standards in all mass tort cases of \$100 million and over. In helping to strip this amendment from the tax bill, Utah Senator Orrin Hatch didn't just bury a badly needed tort reform. He and his Republican fifth column took away \$9 billion in exorbitant fees that would have been returned to the states and smoothed the way to passing President Bush's tax cuts (see state-by-state breakout nearby).

Introduced by Jon Kyl (R., Ariz.) and John Cornyn (R., Texas), the amendment would simply have applied to trial lawyer fees the existing provisions of the U.S. tax code that already

Without these votes, the proposal would have been included in the tax bill and thus immune from a Senate filibuster. Though the measure can still be introduced on the Senate floor, the committee defeat makes it much easier for the Democrats to use procedural gimmicks to block it by requiring 60 votes to pass.

It gets uglier, because the same committee vote also guaranteed a bumpier ride for President Bush's tax cuts. Two swing-vote Senators, Susan Collins (R., Maine) and Ben Nelson (D., Neb.), are demanding at least \$20 billion in federal aid for the states in exchange for a ye vote on tax cuts. As the nearby table shows, at \$9 billion the defeated amendment would alone have supplied nearly half that amount.

This is money that by any measure of reasonableness really belongs to the states anyway. The trial lawyers will complain about "retroactively" renegotiating their fee contracts, but that dodges the real issue: The lawyers crafted this deal in a way specifically designed to immunize their fat fee payouts from any judicial review.

They did this through poison pill provisions, such as the one requiring that any fees found excessive would go back to the tobacco industry and not the plaintiffs (the states). The whole thing was designed to give no one any financial incentive to question the fees. This also isn't about government imposing wage controls: Lawyers are fiduciaries and their own canon of ethics says that fees must be "reasonable."

We've been here before, alas. In 1998 the Senate passed an amendment to the McCain tobacco bill that included a similar cap on plaintiff attorneys fees. That time around, Senator Smith voted yes. Senator Lott voted "present." And Senator Hatch also came down on the side of the trial lawyers.

A spokesman told us yesterday that the committee vote was consistent with Senator Hatch's record. A January 3 Associated Press headline put it this way: "Attorneys in tobacco litigation shower Hatch with contributions." In addition to his 1998 vote on the fee amendment, the AP story notes, Senator Hatch also "testified on their behalf before a panel that awarded lawyers \$1.25 billion for their work on a case related to California's tobacco suit."

The Judiciary Committee Chairman is negotiating this Congress with the plaintiffs' lobby over asbestos, medical malpractice and class-action reform, so perhaps he thought it wise to throw them this bone. Too bad the trial bar will merely pocket this concession and move on for its next killing.

## The \$9 Billion Solution

Money states stand to have returned to them from lawyers' fees from the tobacco settlement.

\$ in millions

Ala.	\$142	Ky.	\$129	N.D.	\$21
Alaska	20	La.	143	Ohio	363
Ariz.	164	Maine	41	Okla.	110
Ark.	85	Md.	169	Ore.	109
Calif.	1,083	Mass.	203	Pa.	393
Colo.	138	Mich.	318	R.I.	34
Conn.	109	Minn.	157	S.C.	128
Del.	25	Miss.	91	S.D.	24
D.C.	18	Mo.	179	Tenn.	182
Fla.	511	Mont.	29	Texas	667
Ga.	262	Neb.	55	Utah	71
Hawaii	39	Nev.	64	Vt.	19
Idaho	41	N.H.	40	Va.	226
Ill.	397	N.J.	269	Wash.	188
Ind.	194	N.M.	58	W.Va.	58
Iowa	94	N.Y.	607	Wis.	172
Kan.	86	N.C.	257	Wyo.	16

Source: Estimates for the Intermediate Sanctions Compensatory Revenue Adjustment Act

deal with fiduciaries for pension funds, charities, and so on. Just so no one could accuse them of stinginess, the formula determining the "reasonableness" of fees was one set by the Florida Supreme Court, among the most liberal in the land. Do the math and it allows fees as high as \$2,500 per hour. Senator Kyl calls his measure the "one-yacht-per-lawyer rule."

So how could such an amendment be struck down in a Republican-controlled committee? It starts with Senator Trent Lott (R., Miss.), whose decision to abstain certainly could have nothing to do with his being the brother-in-law to a main architect of the tobacco deal, Dickie Scruggs. Meanwhile, Senator Hatch dickered with the Kyl-Cornyn forces but in the end voted with the trial lawyers, and Oregon Republican Gordon Smith went along for the ride.