

The Double Standard of Tort Reform

Remember the \$54 million dollar lawsuit over lost dry cleaning? The tort "reform" crowd spilled barrels of ink over that lawsuit, suggesting that the whole system needed to be over-



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hauled because of that lawsuit. Now compare a lawsuit filed by Bethesda-based CoStar Realty Information, alleging that managers at New York's Dumann Realty illegally accessed their Web site, a subscription to which costs hundreds of dollars a month and provides clients with access to real estate information such as photos and vacancy databases. According to the complaint, which was filed in the U.S. District Court in Maryland, the attempted swindle cost CoStar roughly \$5,000 in fees.

But here's the \$900 million wrinkle: CoStar is accusing Dumann, as well as the alleged co-conspirators who lent it the account, of copyright infringement. By accessing its Web site on the sly, CoStar claims, Dumann's employees did the equivalent of illegally distributing its content. CoStar is asking that Dumann pay \$150,000 a pop for every stolen glance at a photo, and every search on its database.

If CoStar can show that the password-sharing cost them \$5,000, then they're surely entitled to \$5,000 from the defendant. Perhaps they're even entitled to some multiple of \$5,000 to punish the people who shared the password. So what's a fair multiplier?

The tort "reform" movement believes that punitive damages should rarely exceed 1 or 2 times the amount of actual damages, which would put the maximum value of this lawsuit at \$15,000. They also suggest that a multiple of 10 times or greater may be constitutionally impermissible. Well, in this case, the plaintiff is asking for 180,000 times their actual damages.

I suspect that the "reform" crowd won't say anything about this lawsuit, despite the excessive claim for damages. Why not? Because the businesses who fund the tort "reform" movement often file copyright infringement lawsuits like this. They use lawsuits like that strategically against competitors and defensively against consumers. The same corporation who thinks a \$10 million verdict against it for wrongful death is excessive may very well think a \$100 million verdict for it due to copyright infringement is appropriate.

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