Statement of

The Honorable John Cornyn

United States Senator

Texas

July 23, 2008

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Hearing: "Courting Big Business: Court Decisions that Ignore Corporate Misconduct"

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Thank you, Mr. Chairman.

The topic of today's hearing is "Court Decisions that Ignore Corporate Misconduct." I think that misdiagnoses the real problem plaguing our federal courts. The most serious scandal in our court system today is criminal behavior by plaintiffs' trial lawyers, most prominently Melvyn Weiss, William Lerach, and Dickie Scruggs. For over two months, I have been calling for hearings to investigate these scandals, but my calls have fallen on deaf ears. I submit that today's hearing should investigate "Congress's Decision to Ignore Trial Lawyer Misconduct."

Two of the wealthiest and most high-profile members of the securities class action plaintiffs bar, William Lerach and Melvyn Weiss, have recently plead guilty to federal crimes. Unrepentant, Mr. Lerach stated that the crimes that he committed were "industry practice" within the securities class action plaintiffs' bar. Despite this admitted criminal misconduct, alleged by Mr. Lerach to be industry-wide, there has been zero scrutiny from this Congress. Reasonable people can disagree about the substance of the Supreme Court decisions that spurred this hearing, but there can be no debate that crimes were committed by prominent members of the plaintiff's trial bar. This misconduct cannot be ignored.

The Lerach and Weiss cases shed light on a sad practice that Congress could--and should--address. Lerach and Weiss entered secret agreements with the lead plaintiffs in their securities class action lawsuits to keep an unfair amount of the lawsuit's proceeds between them, while shutting out the ordinary investors who made up the rest of the class. Essentially, the lead plaintiff agreed to an unreasonably high attorneys' fee, with the understanding that the lawyer would funnel a portion of that fee back to the lead plaintiff. Thus, the lawyers were overcompensated and the lead plaintiffs received a disproportionate share of the proceeds of the lawsuit. Ordinary investors were shut out of the secret

arrangement, and so received less of the winnings of the lawsuit than they were entitled to. The sad irony is that the securities class action system, whatever its faults, is designed to protect ordinary investors.

While we would all like to believe that this is just the work of just a few bad apples, the evidence shows that this unjust, unethical, and illegal practice was widespread. As Mr. Lerach told the Wall Street Journal "believe me, it was industry practice." When there are industry-wide criminal practices that victimize ordinary investors, Congress should not look the other way.

There have been noteworthy calls in the media for Congress to investigate these criminal practices within the plaintiffs' bar. One of the leading newspapers in my home state of Texas, The Dallas Morning News, appropriately called the Weiss/Lerach scandal evidence of "one of the dirty little secrets of securities fraud cases - kickbacks and other secret arrangements that provide a pile of cash to lawyers and far less to the supposedly defrauded ordinary investors. . . It's awful enough that ordinary people are defrauded without greedy lawyers abusing them and the system." The Washington Post editorialized in response to the scandal that "What is needed now is a sober discussion about how best to achieve a fairer, more balanced legal system through comprehensive tort reform. . . . Smart and ethical businesspeople and lawyers--and, yes, there are many who fit the bill--would be wise to start working together to craft such a fix."

To open that discussion, I have introduced the Securities Litigation Attorney Accountability and Transparency Act. My bill will require full disclosure of any financial arrangements between the lead plaintiff and the class counsel. This will give smaller class action plaintiffs the information they need to ensure that they are fairly represented, and that the money they deserve isn't secreted into the pockets of lawyers or other litigants by backroom dealings. My bill will also give courts the power to institute a competitive bidding process to make sure that the fee arrangement between the lead plaintiff and the lead attorney gives every class member a fair value and equal justice. Finally, my bill would commission a study of the last 5 years of fee awards in securities class actions to determine the average hourly rate for lead counsel.

Introducing transparency and market discipline into the process of Attorney hiring is a reliable way of protecting the litigants from abuse, as well as ensuring quality, cost effective representation. Corruption can only grow in an environment that lacks the sunshine of transparency and the open space provided by market competition and accountability. A more open, competitive process, overseen by a judge with the class's best interest at heart, will prevent future scandals. Without openness and accountability, future scandals are inevitable.

But my legislation is not necessarily the only appropriate response to this scandal. I urge my colleagues to join me in answering The Washington Post's call to "to start working together to craft" appropriate

responses. We all know that if any industry other than the trial bar engaged in a predatory and illegal "industry practice," there would be widespread outrage and congressional hearings.

If this Congress wants to debate decisions that ignore misconduct, then I would encourage my colleagues to rethink their decision to ignore trial lawyer misconduct.

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