

Bush, Cheney Poised to Make Edwards a Liability as Trial Lawyer

July 28 (Bloomberg) -- Vice President Dick Cheney drew the loudest cheers on his first bus tour of the 2004 election campaign when he told audiences that trial lawyers wreck good companies, wipe out jobs and saddle doctors with costs they pass to patients.

``Lawsuits can ruin an honest business," Cheney said at a July 4 rally in Pittsburgh, part of a swing through Pennsylvania, Ohio and West Virginia for President George W. Bush's re-election bid. ``It's a lot easier for America's businesses to hire workers when they know they don't have to keep hiring lawyers."

Two days later, Democratic presidential candidate John Kerry named former trial lawyer John Edwards, a U.S. senator from North Carolina, as his running mate. The party will endorse his selection tonight at the Democratic National Convention in Boston.

Since then, Bush, 58, and Cheney, 63, have given more than two dozen speeches linking job losses and soaring health-care costs to the kind of injury lawsuits that Edwards, 51, won during his 20-year career as a lawyer. He amassed a net worth of at least \$19 million. Such lawsuits will cost doctors and businesses \$275 billion this year, or 2.3 percent of U.S. economic output, according to an estimate by Philadelphia-based consulting firm Tillinghast-Towers Perrin Consulting.

Lawyers and law firms are the biggest backers of the Kerry campaign among any industry, donating \$11.9 million as of July 8, according to the Center for Responsive Politics, a Washington-based, nonpartisan research group. Edwards got \$9.3 million from the legal profession -- almost half his total donations -- when he ran for the party's presidential nomination earlier this year.

‘Fighting for the Little Guy’

``Most Americans' gut-level reaction is that tort reform is a problem that needs to be fixed because jury awards are out of control," said Paul Gronke, head of the political science department at Reed College in Portland, Oregon. ``The Democrats are clearly on the side of trial lawyers, but they will cast this as fighting for the little guy against big corporations. It's a divisive issue."

A Gallup Organization poll taken July 6 showed that 67 percent of voters viewed Edwards's work representing plaintiffs in injury cases as a strength in qualifying him to be vice president. The poll of 553 registered voters had a margin of error of plus or minus 5 percentage points.

Bush supports a \$250,000 cap on medical-malpractice awards; penalties for lawyers who bring what he calls ``frivolous and junk" lawsuits; and restrictions on where suits can be filed to end ``forum shopping" by lawyers seeking jurisdictions with sympathetic judges and juries, according to his speeches and campaign Web site.

Blaming Insurers

Kerry, 60, who is set to receive his party's nomination at the convention tomorrow, and Edwards oppose most of the Bush proposals, saying insurance companies are mostly responsible for escalating medical-malpractice insurance rates.

Most insurers continue to raise premiums even in states that place caps on malpractice awards, the Kerry-Edwards campaign says on its Web site, citing a 2003 report by Jupiter, Florida-based Weiss Ratings Inc., an independent analyst of financial-services companies.

``Senator Kerry and I are going to stand with families and kids, as we always have and as we believe is important for the president and the vice president to do, instead of being on the side of insurance companies and big drug companies," Edwards said during a July 20 speech in Raleigh, North Carolina.

In a Feb. 16 Washington Post editorial, Edwards proposed requiring medical-malpractice lawsuits to be certified before they are filed. He would also impose mandatory sanctions for frivolous suits, including a ``three-strikes-and-you're-out" provision, so that if a lawyer brought three lawsuits that a judge deemed unworthy, he would be prohibited from bringing another for 10 years.

Asbestos Suits

Among the tort litigation in recent years are hundreds of lawsuits involving Dearborn, Michigan-based Ford Motor Co. for the rollover of its Explorer vehicles, and Tokyo-based Bridgestone Corp. for tire blowouts on Ford vehicles.

Plaintiffs also filed thousands of lawsuits involving asbestos, a fibrous material used for fireproofing that causes lung disease. Those cases have bankrupted more than 70 companies - - including Dresser Industries, purchased in 1998 by Halliburton Co., a Houston-based oilfield-services company that Cheney was running at the time.

Other suits involved alleged illness from silicon breast implants made by Midland, Michigan-based Dow Corning Corp. and product-liability cases against cigarette makers such as Richmond, Virginia-based Philip Morris USA, a unit of Altria Group Inc., one of which resulted in a \$10.1 billion judgment against the tobacco company last year.

Record Awards

Two law professors released a study in January raising questions about whether business groups are overstating the growth of the lawsuits. The study by Theodore Eisenberg of Cornell University in Ithaca, New York, and Geoffrey Miller of New York University concluded that the cost of settling class-action damage suits and lawyers' fees in such cases stayed about the same in the period 1993-2002.

In his career as a trial lawyer, Edwards in 1994 won a \$3.7 million jury award, then a North Carolina record, against an Asheville hospital that gave a man an overdose of a drug to treat alcoholism, leaving the patient partially paralyzed. The next year, Edwards won a \$6.5 million medical-malpractice award for a brain-damaged girl in eastern North Carolina. In 1997, he won a \$25 million jury verdict against Milwaukee-based Wicor Inc.'s Sta- Rite Industries unit for a 5-year-old girl who lost most of her intestines to a defective swimming-pool drain.

The day Edwards was tapped to be the vice-presidential nominee, the Republicans made his career an issue, portraying him as a loyal ally of attorneys who get rich by attacking businesses with lawsuits.

``Edwards puts personal injury trial lawyer buddies over protecting American business," the Republican National Committee said in a 24-page document it released that day.

'Stop These Lawsuits'

The top backers of Edwards's presidential campaign were trial lawyers at the Dallas firm Baron & Budd LLC, who gave a combined \$62,800, Federal Election Commission figures show. Fred Baron, 57, a partner in the firm, is the Kerry campaign's finance co-chairman.

Bush this month criticized Edwards for opposing limits on malpractice liability. And he focused on what he says is the vulnerability of small businesses, which the U.S. Chamber of Commerce says pay out \$88 billion a year because of lawsuits.

``I don't think you can be pro-small business and pro-trial lawyer at the same time," Bush said at a July 14 rally in Waukesha, Wisconsin. ``My opponent has made his choice -- and he put him on the ticket."

The Bush-Cheney campaign says on its Web site that frivolous lawsuits raise health-care costs as much as \$100 billion per year for Americans.

No New Patients

``To make sure health care is affordable, we need medical liability reform," Bush said. ``We need the federal government to make sure that people can have their day in court, but we've got to stop these lawsuits that are driving docs out of business."

Premiums for medical-malpractice insurance have risen more than 1,000 percent in Pennsylvania during the past four years because of malpractice damage awards, said Jitendra Desai, a urologist and president of the state's medical society, which is based in Harrisburg. Desai said some doctors are no longer accepting new patients, and others avoid performing risky or complicated procedures.

``Organized medicine is not going to favor the Democrats," he said.

The American Medical Association, a lobbying group with about 300,000 members, says it doesn't endorse candidates. ``We support a federal legislative solution that include a cap on non-economic damages," the Chicago-based group said in response to questions about Edwards.

'Frightful System'

Kerry's campaign Web site describes Edwards as having spent his career ``representing families and children hurt by the indifference and negligence of others" and ``standing up against the powerful insurance industry and their armies of lawyers."

``The Democrats and the Republicans are on opposite sides of the tort-reform issue and are hurling broadsides at each other, and they're both vulnerable to criticism," said Jeffrey O'Connell, a law professor at the University of Virginia.

``It's a frightful system for plaintiffs and defendants, and the only ones who do well are the lawyers, and Edwards is a perfect example," he said. ``We pay huge sums for a lottery system."

While business groups such as the Chamber of Commerce are lining up behind Bush on tort reform, Blair Efron, a managing director at UBS AG who supports Kerry and Edwards, said criticism of Edwards's background is unwarranted.

``It's unfair to simply say because he was a lawyer he's unfriendly to business," said Efron. In 1996, Edwards's 16-year-old son, Wade, was killed in a jeep rollover, and Edwards didn't file a lawsuit, Efron said.

Class-Action Suits

Warren Spector, president and chief operating officer of New York-based Bear Stearns Cos., said Edwards isn't the focus of executives' criticism.

``Most of the concern in the business community is not about the type of lawyer that John Edwards was, but about the class-action lawsuits," said Spector, 46, who endorsed Kerry. ``There's no evidence whatsoever of any animosity toward business."

The Senate is considering curtailing class-action lawsuits -- those that involve complaints by hundreds or thousands of plaintiffs combined into one case -- by requiring that some be moved from state courts to federal forums, where certification standards are stricter. The measure would also prevent trial lawyers from collecting more fees in settlements than the compensation that injury victims get.

One Out of Seven

The proposal is supported by a coalition of more than two dozen companies. Among them are Ford and Santa Clara, California-based Intel Corp., the world's largest semiconductor maker.

Senate Democrats on July 8 blocked passage of the bill after Republicans barred amendments, including one raising the minimum wage.

At least seven tort-reform bills have been introduced in the Senate in the last 13 months, including three that seek to limit awards in medical-malpractice cases. Only one even got a hearing before a Senate Judiciary Committee subcommittee: a bill to shield fast-food chains from lawsuits claiming their products made consumers too fat. The committee didn't vote on the legislation.

Legislation that would limit non-economic, or punitive, damages in medical-malpractice suits passed the House of Representatives, where Republicans have a 228-to-206 majority.

Carlton Carl, a spokesman for the Washington-based American Trial Lawyers Association, said liability costs are the fault of negligent companies and not of those injured or their attorneys. Efforts by business groups to set limits on damage awards takes the power to remedy problems away from juries, he said.

No Name-Calling

``What they are proposing there is to substitute the judgment of politicians who know no facts about the case for the 12 men and women who have heard all of the facts presented," Carl said. ``It's not reform by any stretch of the imagination to take away the legal rights of American families."

Dennis Archer, president of the Chicago-based American Bar Association, said he's concerned that politicians are being unfair to lawyers.

``Because of the gravity of the issues confronting voters, we hope the major parties -- the world's preeminent political institutions -- will agree to focus on a discussion of those issues and not resort to name-calling and finger-pointing or use convenient scapegoats to scare the public," Archer wrote in a July 20 letter to the Republican and Democratic national committees.

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