DO AS I SAY, NOT AS I SUE

Exposing the Lawsuit-Happy Hypocrites of U.S. Chamber's Institute for Legal Reform

AMERICAN ASSOCIATION for JUSTICE
Formerly the Association of Trial Lawyers of America (ATLA®)

OCTOBER 2011

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Introduction

The Institute for Legal Reform (ILR), an arm of the U.S. Chamber of Commerce, has the sole mission of restricting the ability of individuals harmed by negligent corporations to access the civil justice system. According to the multinational corporations that finance ILR, American businesses are hindered by too many lawsuits. Yet these same corporations show no hesitation in liberally using the courthouse themselves.

Caterpillar for instance, one of ILR's board members, sued Disney because it felt the depiction of bulldozers in the straight-to-video movie *George of the Jungle 2* was overly villainous. FedEx, another stalwart ILR board member, took a "stand for justice" by suing a man for making a chair out of FedEx boxes. And Johnson & Johnson used the civil justice system to take on a most unlikely foe – the Red Cross.

However silly these lawsuits may sound, they share one common theme: the company filing the lawsuit had the Constitutional right to do so. What makes their actions shameful and hypocritical is that these companies are members of ILR's board for the sole purpose of denying Americans this same right, especially when severely harmed or killed by the companies' products and services.

One Rule for Us, One Rule for Them

While ILR's board members regularly use the legal system to advance their own agendas, they also advocate closing the courthouse door to anyone who would hold them accountable for their own wrongdoing. Honeywell International, for instance, has no problem taking competitors to court for infringing on their intellectual property, but would prefer not to be held accountable for distributing defective body armor to law enforcement personnel across the country. Prudential took another Wall Street firm to court for bad advice that caused it to lose money on subprime mortgages, but would rather not have to face charges that it deliberately sold insurance policies to benefit from the deaths of U.S. soldiers. And the Koch brothers think nothing of spending over a decade suing each other for billions, but balk at being held responsible for a record of pollution which has made them the 10th most toxic company in America.

The irony of their "one rule for us, another for them" motto is not restricted to the ILR's multinational corporations. The U.S. Chamber of Commerce maintains another arm that is itself one of the most aggressive litigators in Washington. The National Chamber Litigation Center (NCLC), like ILR, is funded entirely by large multinational corporations, files lawsuits and enters into the lawsuits of others more than 100 times a year. Chamber president and CEO Tom Donohue "loves litigation" and has himself boasted, "litigation is one of our most powerful tools for making sure that federal agencies follow the law and are held accountable."

On one hand, the Chamber spends an unrivaled amount of money lobbying to restrict access to the courts for everyday Americans. On the other, it files copious lawsuits and briefs in defense of the likes of AIG, Walmart, Firestone and a slew of pharmaceutical and insurance companies.

Every company that holds a seat on ILR's board or participates as a member stands to gain monetarily from the organization's agenda of blocking the courthouse doors. While all corporations want to retain the right to access the civil justice system when they have been wronged, the corporations that participate in the Institute for Legal Reform are actively trying to deny those same rights to their own customers.

The Top Ten ILR Hypocrites

1. Honeywell International, ILR Board Member Since 2007

Honeywell International has faced many lawsuits over its wide array of products, so the Chamber's advocacy for legislation that would grant legal immunity to companies that produce dangerous products is seemingly a perfect fit. Over the years, the U.S. Chamber of Commerce and the Institute for Legal Reform have lobbied for countless pieces of legislation that would give immunity to corporations when they manufacture and sell dangerous and defective products.

If all of this legislation passed, Honeywell would be completely off the hook for its role in producing one of the most egregiously defective products of all time: the Zylon bulletproof vest. The manufacturers of Zylon have known since at least 1998 that the material rapidly degrades in heat and humidity, making it possible for a bullet to pass through. But rather than correct the problem, corporations manufactured and sold the not-really-bulletproof vests until September 2003. During that time, thousands of vests were sold to law enforcement agencies and worn by police officers and former President George W. Bush and Mrs. Bush.

The U.S. Department of Justice has sued the companies involved under the False Claims Act over their roles in selling defective Zylon bulletproof vests to U.S. law enforcement.[1] While the U.S. government has settled with 10 companies involved in the manufacture and sale of the defective Zylon vests, Honeywell has taken a different tact and has filed a complaint against the U.S. Department of Justice, alleging misconduct in the government's handling of the case.[2]

So what else does Honeywell receive for its seat on ILR's board? It appears to get public relations assistance from the Chamber when it is held accountable in court for bad behavior. In March 2011, a jury in McLean County, Illinois, delivered a multi-million dollar verdict against Honeywell International and three other corporations for conspiring to conceal the dangers of asbestos and negligently exposing individuals to the deadly fiber. Four days after the jury rendered their verdict, the Institute for Legal Reform issued a press release saying the decision "confirms a troubling trend in the State of Illinois where there is a hostile litigation environment."[3]

The Chamber's efforts to slander Illinois' judicial system soon moved into the newspapers, where ILR President Lisa Rickard placed an op-ed in the *Chicago Tribune* calling McLean County "a home for outrageous, abusive lawsuits."[4] Shortly after, the *Madison County Record*, a newspaper fully owned by the U.S. Chamber of Commerce, expanded upon the branding campaign in an article headlined, "McLean County Continues Inching Closer to Becoming a 'Judicial Hellhole.'"[5] Most recently, a Rickard-penned op-ed appeared in the Bloomington, Illinois *Pantagraph* newspaper, where she called out McLean County's judges for "wast[ing] taxpayer dollars and jurors' time," by allowing people who have developed deadly asbestos-related diseases through the negligence of corporations to resolve their disputes through litigation.[6]

If Honeywell were to have insulted McLean County's judges and juries to this extent directly, readers of these publications would immediately see that the company was trying to manipulate their opinions of fairness for its own gain. But with the Institute for Legal Reform acting as a seemingly unbiased surrogate, Honeywell can see its message get widely distributed without its name anywhere close to the story. A jury verdict is one of the few things a corporation cannot buy and control. But they can buy media to try to create biases that jurors will carry with them into the deliberation room. And in this instance, that is the value of Honeywell's seat on ILR's board.

2. FedEx, ILR Board Member Since 2004

FedEx called in its lawyers to take down one enterprising customer who had built an apartment full of furniture out of FedEx boxes. In 2005, software developer Jose Avila moved to a new apartment but was too broke to buy new furniture. Instead of scrounging up second-hand furniture, Avila decided to make some out of FedEx boxes. He created a table and chairs, a desk and even a bed, all of which turned out to be surprisingly sturdy. Jose said he was a loyal fan of both FedEx and its boxes, but that did not stop FedEx from claiming he had violated the company's trademark and copyrights. Eventually Jose was forced to take down his website featuring his FedEx furniture. But he did get something out of it: when mattress maker Dormia heard of his tale, they sent him a free memory foam mattress.[7]

While FedEx has every right to protect its trademarks through litigation, its tactics of pursuing lawsuits against individuals like Avila and small businesses with names like Federal Espresso contrast with the company's aggressive efforts to limit the ability of individuals to bring lawsuits against businesses.[8] FedEx has been particularly active in curtailing the use of class action litigation. When Kenneth Masterson, a former executive vice president, general counsel and secretary of FedEx said, "our courts are clogged with frivolous suits…[leaving] the judicial system badly overloaded, often forcing those who have suffered legitimate injury to wait years to get their day in court," he was not describing lawsuits like cardboard furniture one described above.[9] Instead, he was referring to lawsuits brought against the company by its own employees.

FedEx wants to limit the ability of individuals to join together to file class action lawsuits because it has been the target of them so many times. In 2003, 20,000 African American and Hispanic workers filed a racial discrimination lawsuit against FedEx Express alleging that minorities had been passed over for promotions and treated unfairly in evaluations. FedEx settled the lawsuit in 2007 for $53.5 million and a promise that it would reform its human resources department.[10] The company has also been the target of several class action and government lawsuits over its policy of classifying drivers as independent contractors and not employees, allowing the company to avoid paying taxes and providing benefits for these workers while evading state labor laws.[11]

In the Institute for Legal Reform, FedEx has found a partner willing to fight to restrict the rights of Americans to join together to challenge massive corporations when they believe they have been harmed. ILR has taken the lead on making it more difficult to bring a class

action lawsuit against its member companies both through legislation and, most recently, in the courts. During the 2010 U.S. Supreme Court term, the National Chamber Litigation Center filed two briefs in support of longtime board member Walmart in what the NCLC called "without a doubt the most important class action case in more than a decade," *Wal-Mart Stores, Inc. v. Dukes et al*.[12] In the landmark case, the Supreme Court ruled that the 1.5 million who joined together to challenge Walmart for paying them lower wages and offering them fewer promotions than their male coworkers could not form a class and fight one of the world's largest companies together.

3. Dow Chemical Company, ILR Board Member Since 2003

The Chamber's work in *Wal-Mart v. Dukes* has benefited the large majority of ILR's board members. Shortly after the U.S. Supreme Court released the opinion, attorneys at Kirkland & Ellis, a longtime member of ILR's board, began citing the *Wal-Mart* decision in cases in which their corporate clients are involved. In fact, one of the first companies to invoke the ruling in its own litigation was fellow ILR board member Dow Chemical.

Just weeks after the *Wal-Mart* decision, a Michigan state court judge decertified a class of 2,500 plaintiffs who were suing Dow Chemical over toxic chemical contamination that decreased the value of properties along the Tittabawassee River basin.[13] Dow has acknowledged responsibility for releasing dioxins and furans into the river between the late 1800s and 1970s and has entered into an agreement with the EPA to clean up the site.[14] In the meantime, residents in the contaminated have seen their property values decrease and are at risk for developing cancer and other ailments from exposure to the toxins.

This instance of toxic contamination is not an isolated incidence for Dow Chemical. For decades, the corporation has contaminated the environment around the world and has knowingly exposed its workers and the general public to chemicals and substances that cause serious, and sometimes fatal, injuries. Perhaps the most infamous example occurred on December 3, 1984, when a rundown plant operated by Union Carbide released toxic vapors into the atmosphere in Bhopal, India, killing 8,000 people within hours. In the years since the accident, the death toll has climbed to over 20,000, with hundreds of thousands of other injured. The effects of the world's worst industrial accident are still felt today. Following the disaster, Union Carbide shuttered the plant with chemicals still inside. Nearly three decades later, the site is still heavily contaminated.[15]

In 1999, Dow agreed to purchase Union Carbide for $9.3 billion in stock.[16] With the deal, Dow purchased the stigma associated with Bhopal, but it refuses to take financial responsibility for the disaster, even though its shareholders have proposed that it should.[17]

Dow has been responsible for numerous environmental disasters and deaths and injuries from its products. But every time it endangers the public with products like Agent Orange, Fumazone, or defective silicone breast implants, they can turn to their former vice president Lisa Rickard – now the president of the Institute for Legal Reform – to help them evade accountability.

4. General Motors Corp, ILR Board Member Since 2007

General Motors had a difficult year in 2008. In an attempt to raise cash, General Motors sued its own workers for allegedly buying too many of its own cars under an employee discount program – even as it was extending that same program to the general public. The discount allowed employees to purchase as many as seven cars a year for family members. Longtime employees, retirees, and even widows were pursued by the car maker despite evidence that it was dealers who were behind the discounts. In one case, GM sued retired electrician Omar El for more than $80,000 for allegedly passing the discount to 14 unauthorized people. Omar, who worked for GM for 32 years, said he had no idea who the people were. His lawyer believed that unscrupulous dealers were using his identity – on file from a previous purchase – to provide discounts to unrelated customers. Even while pursuing its own workers, GM opened the discount to the public nationwide in August 2008 in an attempt to drive sales.[18]

Shortly after GM opened the employee discount to the public, the auto manufacturer was brought to the brink of bankruptcy during the collapse of the U.S. economy. After years of financial difficulties, U.S. automakers were about to go out of business when the federal government directed billions of dollars into GM and Chrysler to keep the companies operating and give them time to restructure and become financially stable.[19]

The money did come with some strings attached, one of which was that by accepting the bailout money, the auto manufacturers would relinquish their right to sue states over emissions standards. In a letter to Congress, U.S. Chamber of Commerce Executive Vice President R. Bruce Josten ironically called the provision, "blackmail, pure and simple," and said that "the denial of right to sue provision would set a chilling precedent."[20]

While the bailout prevented GM from suing the states over auto emissions standards, it did provide legal immunity to auto manufacturers for outstanding liabilities related to car defects. The government-brokered bankruptcy cleared company's debts to certain creditors, including jury awards and legal settlements that had yet to be paid to the victims of car design defects and asbestos-related diseases. At the time of the bailout, GM was due to pay out nearly $3.3 billion in legal claims, mostly related to product liability lawsuits.[21]

Over the years, GM has produced many dangerous cars and has gone to great lengths to cover up the problems. In fact, one of the most infamous examples of a corporation putting profits ahead of consumer safety is the story of GM's Chevy Malibu and its dangerous "side saddle" fuel tank, which was prone to explode in collisions. In an infamous internal memo that was revealed during litigation, GM calculated that if 500 people burned to death in fuel tank-related accidents, the resulting payouts would cost the company $2.40 per car. The cost per car to actually fix the design and avoid killing people was $8.40. GM chose the cheaper option.

More recently, GM has been sued over the inadequate strength of the roofs of their cars. Though auto manufacturers have known of this problem since at least the 1960s, the problem only came to light as the prevalence of SUVs, which are prone to roll over in accidents, increased. General Motors once conducted its own internal roof crush crash tests and discovered that five out of six models failed. Rather than fix the problem, they chose to cover it up for 30 years and blamed rollover deaths and injuries on the occupants' seat belt use, not the faulty design of their cars.[22]

5. Caterpillar, ILR Board Member Since 2005

In 2003, heavy machinery maker Caterpillar took exception to the portrayal of diggers in the Disney straight-to-video movie *George of the Jungle 2*, saying they were too villainous. In the movie, the diggers are used by industrialists trying to destroy the jungle. George and his friends fend off the diggers with a combination of projectile coconuts, animal feces, and combustible ape flatulence. In reality, it was an Illinois judge that saw off Caterpillar, stating the company had suffered no real harm.[23]

Caterpillar is not shy about using the courthouse to get its way. In 2007, for instance, the company sued its longtime partner Aon, alleging fraud and anticompetitive behavior, and in 2011 it sued its own Asian distributor for $12 million.[24]

However, Caterpillar's involvement with ILR stems from the fact that, while it uses the courtroom to solve its own disputes, it does not appreciate other companies and individuals taking it to court. Simply put, Caterpillar, like many of the corporations of ILR, believes in one rule for itself and another for everyone else – especially to avoid losing profits over things like defective trucks, violations of environmental laws, deliberately misleading financial statements, oil spills, and overcharging its own employees for millions of dollars of 401k fees.[25]

Perhaps Caterpillar's biggest attachment to ILR is its desire for an ally in battles to avoid asbestos liability. Caterpillar has spent at least $25 million trying to avoid liability for asbestos claims over the last few decades.[26] Most of Caterpillar's potential liability for the health effects suffered by dying men and women exposed to asbestos originates from other companies that Caterpillar bought. Caterpillar, like many of the ILR corporations trying to find a way out of asbestos liability, claims it never manufactured asbestos and should not be held accountable for any related health problems now. Yet Caterpillar bought those companies with full knowledge of their liabilities, and even sought insurance on the prospects of future liability.

Where Caterpillar stands out from many of its corporate colleagues is that the company has some primary asbestos liability of its own. Despite its cries that it had nothing to do with asbestos, it turns out Caterpillar made its bulldozers with the lethal material until just 10 years ago. In 2005, a California jury awarded a bulldozer operator $2.3 million after he contracted mesothelioma, an incurable asbestos-caused cancer, after exposure in Caterpillar machinery. The exposure came from the bulldozer itself, which, as recently as 2001, was made with 200 parts containing asbestos, including brake pads and linings and gaskets in high friction areas.[27]

6. State Farm, ILR Board Member Since 2003

In 2009, Stacy Calderon lost control of her Pontiac Firebird and caused a three-car collision in Fresno, California. That same day, another woman named Stacy Calderon was at her home in Placentia, four hours away. Due to a mistake on the police report, it was this second uninvolved Stacy Calderon who State Farm served with a lawsuit. Stacy had multiple witnesses, bank statements and other evidence proving she was nowhere near Fresno at the time of the accident. The evidence was enough to persuade the California Department of Motor Vehicles that there had been a mix-up, but not State Farm. The insurance giant continued to pursue her even with a mountain of evidence that they had the wrong person, forcing Stacy to spend

thousands of dollars hiring a defense lawyer. When confronted with their mistake by the *Orange County Register*, State Farm admitted the mistake but refused to drop the case.[28]

As the biggest property casualty insurance company in America, State Farm has become notorious for fighting individuals, oftentimes its own policyholders, in court. In many cases, the company has gone to extreme lengths to avoid paying claims, including forging signatures on earthquake waivers after the deadly Northridge earthquake, and altering engineering reports regarding damage after Hurricane Katrina.

Hurricane Katrina showed State Farm at its worst. One of the deadliest natural disasters in U.S. history, Hurricane Katrina made landfall on August 29, 2005, near Buras, Louisiana. The storm killed nearly 1,600 people and caused $135 billion in damages.

Hurricane Katrina highlighted insurance company use of such things as anti-concurrent clauses, which led policyholders into believing they were covered from the risks of hurricanes, when in fact subsequent flooding might wipe out any chance of a claim being paid. According to former United States Senator Trent Lott (R-Miss.), one of the policyholders whom State Farm denied, "They don't want you to know what you really have covered."

When a grand jury later issued subpoenas probing new claims against State Farm, the company sued Mississippi Attorney General Jim Hood. Hood decried the lawsuit, saying the company's agreement to reopen claims had never been intended as "blanket immunity" from future probes.

State Farm competes for business with Allstate, Liberty Mutual, Nationwide, and Travelers, but these companies all share one common goal in their work in ILR's board: to limit the ability of Americans to bring claims against them. Insurers make money when they avoid paying claims, and they make even more money when claims cannot be filed in the first place. The Institute for Legal Reform is more than happy to help in their efforts.

7. Koch Industries, ILR Board Member Since 2007

Koch Industries, the second largest privately held company in the United States, has a long history of pushing for tort reform. Yet the four Koch brothers, who inherited the company from their father, spent two decades filling the docket of courtroom after courtroom with their dispute over who should get how much of Koch Industries' enormous wealth. The dispute began in 1980, and even after reaching a multi-billion dollar settlement, the four were soon once again suing and countersuing each other in litigation that dragged on 13 more years. William Koch went so far as to sue his own mother and subpoena her into court.[29]

As one of the largest corporations in America, Koch Industries has certainly faced its share of criticism and litigation. The controversial nature of some of its products and services – the energy giant owns such companies and products as Lycra®, Stainmaster Carpet® and Georgia-Pacific and is heavily involved in oil refining and distribution, chemical processing, fertilizers, minerals, fibers, commodities trading, and many other ventures – has made it a frequent

defendant in courtrooms around the country. The sheer scope of Koch Industries' business has made the Institute for Legal Reform a key vehicle for advancing favorable laws in Congress, the courts and the media.

While Koch Industries would certainly benefit from laws to immunize corporations that manufacture and sell dangerous or defective products, the Institute for Legal Reform has recently advocated for reforming corporate crime laws, including ones Koch Industries has been accused of violating. Recent reports indicate that Koch Industries and its subsidiaries may have violated the Foreign Corrupt Practices Act (FCPA), which prohibits American companies and their agents from bribing foreign officials to obtain business in their countries, by making improper payments to officials in several countries including Iran.[30]

At its Legal Reform Summit in October 2010, the Institute for Legal Reform published a paper written by attorneys at Jenner & Block that questioned the enforcement of the FCPA and recommended changes to weaken the law and allow U.S. corporations to bribe foreign officials.[31] Clearly this issue would be unpalatable for an individual corporation to advocate for on its own because doing so is an almost certain admission that the company bribes foreign officials in violation of the FCPA. That makes the Institute for Legal Reform the perfect entity to take the lead on the issue. Since the report was released, ILR has sent lobbyists to Capitol Hill, such as former U.S. Attorney General Michael Mukasey, testified in Congressional hearings and has focused media attention on the issue. While ILR takes the public relations hit for asking that a bribery law not be enforced, corporations like Koch Industries, News Corp, and others accused of bribing foreign officials to advance their businesses' agendas can stay far away from the issue.[32]

8. Abbott Laboratories, ILR Board Member Since 2004

In July 2011, Abbott Laboratories sued Hospira for alleged patent infringement. This in itself was not a remarkable event between two pharmaceutical companies, except that Hospira is a spin-off of Abbott Laboratories. The company was spun off in 2004, when the president of Abbott's Hospital Products Division, Chris Begley, became Hospira's first CEO.[33]

Abbott Laboratories has a history of suing other pharmaceutical companies. The pharmaceutical giant has been particularly litigious when it comes to its $1 billion blockbuster cholesterol-lowering drug TriCore. Between 2000 and 2004, Abbott and French pharmaceutical company Fournier Industrie et Sante filed at least 10 lawsuits against generic manufacturers to trigger delays in FDA approval of lower-cost generic versions of the drug.

Abbott's efforts to keep cheaper generic versions of the drug off the market eventually backfired. In 2008, attorneys general of 25 states and the District of Columbia sued Abbott and Fournier for conspiring to secure monopoly power over the drug by acquiring improper patents that they knew were unenforceable, making insignificant changes to the drug to prevent generics from being sold, and filing sham lawsuits against generic manufacturers to delay their efforts to bring cheaper versions of the drugs to the market. The lawsuit was settled in January of 2011.[34]

While Abbott clearly uses litigation to boost its bottom line, it does not view litigation in a favorable light when it is on the receiving end. Currently Abbott is facing numerous lawsuits over dangerous side effects associated with its blockbuster drug Humira, which brought in $6.5 billion in sales in 2010. Abbott Laboratories was sued by a Montana woman in September 2011 over Humira, a drug used to treat Crohn's disease. Kara Mae Pletan claimed that the drug caused permanent peripheral neuropathy, or painful numbness of the feet. The lawsuit alleged that Abbott was aware of the side effects of the drug but continued to market it without telling patients of the potential dangers associated with it.[35] That lawsuit came just a month after the family of an 11-year-old boy in Texas filed a lawsuit against Abbott for failing to warn of potential side effects of Humira. In this case, the boy was taking Humira to treat psoriasis and ended up developing leukemia.[36] Other lawsuits have claimed the drug caused permanent eye damage and serious fungal infections.[37]

Humira is not the only dangerous drug manufactured by Abbott in the news recently. In October 2010, under pressure from the FDA, Abbott pulled its diet drug Meridia from the market after studies showed that it increased the risk of heart attack and stroke. According to Dr. John Jenkins, director of the office of new drugs at the FDA, "there was no identifiable population of patients for whom the benefits of Meridia outweighed its risks." The move followed action by European regulators who had ordered the drug off the market earlier in the year.[38]

Abbott Laboratories and other pharmaceutical company members of ILR have been the beneficiaries of the organization's campaign to provide complete immunity from liability to prescription drug manufacturers, even when they knowingly sell drugs with deadly side effects. ILR has pushed for federal legislation and regulations that would wipe out strong state laws that protect consumers and has embarked on a media campaign in support of their efforts. They have also enlisted the help of the National Chamber Litigation Center to champion their cause in the courts.

9. Prudential, ILR Board Member Since 2004

While the shenanigans of its Wall Street colleagues have affected most Americans, Prudential has proved determined to avoid the worst of the economic recession. Prudential sued State Street over $80 million in investment losses connected to subprime mortgages. The lost money was not actually Prudential's; rather, it was losses suffered by some 28,000 individuals who had let Prudential manage their money. But that did not stop Prudential from looking for retribution.[39]

This was not the first time that Prudential had made a dubious claim to other people's money. In 2010, the company came under heavy criticism for its practice of profiting off the insurance policies of dead U.S. soldiers.

Prudential did this by keeping the insurance proceeds from the policies of deceased soldiers in its own coffers, instead of offering lump sum payments to the families as required by federal law. When it did finally pay out the money, it would keep the vast majority of the interest for itself. The company made at least half a billion dollars using this tactic.[40]

Prudential's involvement with the U.S. Chamber of Commerce can be viewed as another form of insurance. The company uses its largesse to fund the Chamber's attempts to provide it with immunity for corporate wrongdoing. In 2009, Prudential gave $2 million as the Chamber embarked on a campaign to weaken financial regulations, the makings of the typical "pay-to-play" Chamber strategy.[41]

10. Johnson & Johnson, ILR Board Member Since 2003

In 2007, pharmaceutical and medical device giant sued the Red Cross over its use of the red cross symbol. Johnson & Johnson objected to the symbol's use on first aid kits and other disaster-preparedness items created by the American Red Cross. The company sought not only the destruction of the kits, but also punitive damages against the charity and payment for its own legal fees. The American Red Cross, which was first established in 1881 by Clara Barton, had amicably shared the red cross symbol with Johnson & Johnson for more than a century. In fact, Johnson & Johnson had previously offered to sell first-aid kits with the American Red Cross branding. The American Red Cross responded to the suit by saying, "For a multi-billion dollar drug company to claim that the Red Cross violated a criminal statute that was created to protect the humanitarian mission of the Red Cross – simply so that Johnson & Johnson can make more money – is obscene." A judge eventually ruled for the American Red Cross.[42]

The American Red Cross was not the only organization to feel Johnson & Johnson's wrath. In 2007, pharmaceutical giant won the largest patent-infringement award in history, when it persuaded a court to force fellow ILR board member Abbott Laboratories to pay $1.84 billion over claims that Abbott had used Johnson & Johnson patents to develop arthritis drug Humira. Abbott successfully appealed the verdict.[43] But Johnson & Johnson soon succeeded in a different case; in 2010, the company won over $2 billion in patent lawsuits from Boston Scientific in a lawsuit over heart stent devices.[44]

Johnson & Johnson's interest in ILR's efforts coincided with several high-profile problems that had exposed the company to potential liability. The company was forced to recall DePuy hip implants that had been used in more than 93,000 people worldwide after it was revealed the devices had a high failure rate. Medical experts expressed dismay that Johnson & Johnson allowed the devices to continue to be implanted despite years of evidence that serious problems were occurring.[45]

The problem with the DePuy implants was taken by many as just the latest sign that the company was putting profits before quality. The Food and Drug Administration (FDA) took the company to task for illegally marketing and selling unapproved knee and hip devices, and the Justice Department pinged the company for driving up sales of pharmaceuticals using illegal kickbacks.[46]

From 1993 to 1998, Johnson & Johnson made over $1 billion in sales from Propulsid, a prescription heartburn medication, even as the company knew hundreds of patients were dying from lethal side effects. Documents from lawsuits on behalf of injured patients against the company showed that the company did not conduct studies recommended by federal regulators and never published other studies that might have warned physicians of possible risks associated with the drug. Moreover, while Johnson & Johnson agreed not to market

Propulsid directly for children because they were at particular risk, the company did push so-called educational efforts advocating the drug's use in pediatric patients, sidestepping the agreement not to market for children. Pediatricians responded, writing half a million prescriptions for the medication for use in infants and children in 1998 alone.

In August of 1997, the FDA proposed major changes to Propulsid's warning label. Johnson & Johnson's internal analysis estimated the changes would cost over $250 million a year in lost sales; so in June 1998, nearly a year later, it rejected almost all of them. Over the next three years, over 100 infants were injured and at least 24 died.

In all, at least 300 people died and as many as 16,000 were injured by Propulsid. By 2000, the FDA was no longer able to overlook the connection between Propulsid and the heart conditions appearing in patients who took it. The agency announced a public meeting to discuss the safety concerns with the drug. Three weeks before the meeting was set to occur, Johnson & Johnson announced it would stop selling Propulsid.

All of which explains why Johnson & Johnson and its $23 million-a-year CEO William Weldon was so invested in tort reform. Johnson & Johnson's representative on the ILR board, general counsel Russell C. Deyo, was also co-chair of the corporate-backed Civil Justice Reform Group steering committee. Johnson & Johnson also funds the American Legislative Exchange Council (ALEC), a corporate-backed group that pushes state laws favorable to corporations.

Conclusion

The Institute for Legal Reform and its multinational corporate members have spent hundreds of millions of dollars trying to eviscerate the country's court system and free themselves from the specter of accountability. Yet at the same time, these same corporations have proved to be some of the country's most prolific litigation machines.

The corporations of ILR believe in one rule for them, and another for the rest of us. They work to close the courthouse door to individuals, just as they use those same courts liberally for their own agenda.

At the heart of this double standard is their corporate creed that profits come before people. It justifies decisions to keep defective drugs, bulletproof vests, and cars on the marketplace, even when corporations know people may be injured or killed. It justifies the decision to find a way to profit off the insurance policies of dead soldiers, to dump harmful pollution, or to deny an individual's insurance claim. And it justifies the apparent hypocrisy behind their belief that courts are not for individuals seeking accountability for such decisions, but only for businesses seeking to maximize profits.

It is the right of the corporations of ILR to seek what they believe to be justice in a court of law. However, these corporations must recognize that this right to justice belongs not just to big business, but to all Americans.

Appendix: Institute for Legal Reform Board Members — 2009

Michele Coleman Mayes
Senior Vice President and General Counsel
Allstate Insurance Company

Rich McCarty
Senior Vice President and General Counsel
X.L. America, Inc.

Dino E. Robusto
Executive Vice President
The Chubb Corporation

Laura J. Schumacher
Executive VP, General Counsel and Secretary
Abbott Laboratories

Mark E. Segall
Head of Litigation
J.P. Morgan Chase

Kenneth F. Spence III
Executive Vice President and General Counsel
The Travelers Companies, Inc.

Mary H. Terzino
Assistant General Counsel
Dow Chemical Co.

James Turley
Chief Executive Officer
Ernst & Young

Craig D. Vermie
General Counsel
Aegon

Thomas D. Hyde
Executive VP, Legal Ethics and Corporate Secretary
Walmart

Alan J. Kreczko
Executive Vice President and General Counsel
The Hartford Financial Services Group

Peter M. Kreindler
Senior Vice President and General Counsel
Honeywell International, Inc.

Robert S. Osborne
Vice President and General Counsel
General Motors Corporation

Bradford Rich
Senior Vice President and General Counsel
OneBeacon Insurance

John Spinnato
Vice President and General Counsel
Sanofi-Aventis

Lawrence V. Stein
Senior Vice President and General Counsel
Wyeth

Thomas A. Gottschalk
Of Counsel
Kirkland & Ellis

Samuel K. Skinner
Retired Chairman and CEO
USF Corporation

Andrew A. Barnard
President and Chief Executive Officer
Odyssey Re Holdings Corp

Steve Bartlett
Chief Executive Officer
The Financial Services Roundtable

Susan Blount
Senior Vice President and General Counsel
Prudential Financial

Kim M. Brunner
Chief Legal Officer, Executive VP and Secretary
State Farm Mutual

James B. Buda
Vice President and General Counsel
Caterpillar

John Castellani
President
Business Roundtable

Brackett B. Denniston II
Senior VP and General Counsel
General Electric Company

Russell C. Deyo
Vice President and General Counsel
Johnson & Johnson

Jeffrey J. Gearhart
Executive Vice President, General Counsel
Walmart

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