

CORPORATE HYPOCRISY EXPOSED

Consumer Groups Reveal How Manufacturers Want the Courts All to Themselves

Report Documents Examples of Corporate Hypocrisy

A new report, prepared by the national consumer advocacy groups Public Citizen and Citizen Action, documents the blatant hypocrisy of the business groups and insurance companies pushing so-called legal "reform" in our state legislatures and Congress. *Specifically, this report reveals that the same companies lobbying to restrict the legal rights of injured consumers have unfettered access to our nation's courts as their own private playground.*

This report focuses on a sampling of cases in which members of the National Association of Manufacturers (NAM) have been plaintiffs and defendants. The cases reveal that American businesses often file anti-competitive litigation, designed to intimidate or harass. In contrast, the cases in which they are defendants demonstrate a cavalier or reckless attitude toward the health and safety of American consumers.

Helmet Maker's Hypocrisy Exposed at Recent Hearing

Nowhere was corporate hypocrisy more decisively illustrated than at a March 4, 1997, hearing on product liability before the U.S. Senate. Julie Nimmons, chief executive officer of football helmet manufacturer Schutt, complained to the Committee that litigation over dangerous and defective equipment burdened her company. In fact, *Sports Illustrated* has reported that lawsuits over defective football helmets have spurred manufacturers to make safer products, and that fewer players die each year due to safety improvements made as a result of litigation.

When confronted with the fact that her company had engaged in what a trial court called "unwarranted and frivolous" anti-competitive business litigation against a competitor, Nimmons could provide no plausible justification for her position to restrict consumers' access to the courts.

Caterpillar, Others Push Corporate Double Standard

As this report documents, Schutt is not alone in advancing a "do as I say, not as I sue" approach to litigation. Caterpillar has no qualms harassing small-time "competitors" with lawsuits, yet wants Congress to protect it from citizens like Garry Huffman, who was killed by a defective Caterpillar machine. Tobacco-giant Brown & Williamson wants to keep cancer victims like Grady Carter from using the courts to expose the company's knowledge of its product's dangers, but then turns around and files its own suit to prevent the release of company documents. Procter & Gamble doesn't want to be held responsible when its tampons cause the toxic shock death of people like Patricia Ann Kehm, yet demands legal damages for having to cope with unflattering gossip about the company.

Are Companies' SEC Filings Telling the Truth?

Included in this report is information from corporate annual reports filed with the Securities and Exchange Commission (SEC) which further reveals the hypocrisy of these major corporations. If expenses related to litigation are a financial burden on corporations, they are misleading shareholders by not revealing this fact in their annual reports. However, if litigation is not a significant expense, as is stated in their SEC filings, then corporations are deceiving Congress and the public with their claims, the groups state.

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THE NATIONAL ASSOCIATION OF MANUFACTURERS: A STUDY IN HYPOCRISY

How NAM Members Use America's Courts As Their Own Personal Playground

The legal "reforms" being pushed in Congress by business groups such as the National Association of Manufacturers (NAM) *affect only the rights of consumers injured or killed by faulty products*. They do *nothing* to stop the ridiculously high number of anti-competitive, costly lawsuits filed each year by businesses against each other.

Businesses suing each other over contracts comprised nearly half of all federal court cases filed between 1985 and 1991, according to *The Wall Street Journal*. And a recent study by the RAND Institute for Civil Justice revealed that business cases account for 47 percent of all punitive damage awards. In contrast, only 4.4 percent of punitive damage awards are assessed in product liability cases.

The duplicity of these companies is further revealed in their annual reports filed with the Securities and Exchange Commission (SEC). If litigation truly is a major burden on operations, then these businesses are misleading shareholders by omitting this fact on their reports. However, if their filings are to be believed and litigation is not a significant expense, then corporations are deceiving Congress and the public with their claims.

The following are just a few examples of NAM members' hypocrisy:

JOHN DEERE & COMPANY

John Deere as Plaintiff

- In 1979, John Deere sued Farmhand Inc. for allegedly using the same color green on its front-end loaders as Deere used on its tractors. Deere sought through its lawsuit to make "John Deere green" its exclusive color so that consumers would not be "confused." A federal judge found in favor of Farmhand and dismissed Deere's claim. *Deere v. Farmhand Inc.*, 560 F. Supp. 85 (S.D.Iowa 1982).

John Deere as Defendant

- Shelley Wingad, 37, was operating a John Deere tractor on a construction site when the machine violently tipped and ejected him, causing severe and permanent damage that rendered him unable to work. In 1993, a jury found Deere liable for this accident and awarded Wingad \$652,000 in damages, \$350,000 of which was for his future loss of earning capacity. The award was upheld on appeal. *Wingad v. John Deere & Co.*, 523 N.W.2d 274 (Wis. Ct. App. 1994).

John Deere's SEC Filings

- "The Company is subject to various unresolved legal actions which arise in the normal course of its business Although it is not possible to predict with certainty the outcome of these unresolved legal actions or the range of possible loss, *the Company believes these unresolved legal actions will not have a material effect on its financial position or results of operations.*" (1/15/97).

CATERPILLAR

Caterpillar as Plaintiff

- In 1985, Caterpillar threatened to file suit against Michael Zinman, a seller of Caterpillar equipment in upstate New York, after he created the "Raterpillar Tractor Co." (consisting of two pet store rats) as a spoof on the company's name. For more than a year, Caterpillar sent intimidating letters to Zinman, which forced him to hire a lawyer. Caterpillar's harassment ended only after Zinman agreed to sell Caterpillar his "company." *AP*, Apr. 20, 1985.

Caterpillar as Defendant

- Garry Huffman was killed in 1981 while using a 1977 Caterpillar pipelayer machine at a Colorado ski area. When the machine began rolling down a hill after being shut off, Huffman tried to apply the brakes, but to no avail. He was crushed while trying to escape. Testimony revealed that Caterpillar subsequently altered the braking system on this model to include an emergency brake that would automatically and immediately stop the machine when the engine is shut off. The jury found Caterpillar liable for Huffman's death and awarded his family \$475,000 in damages. *Huffman v. Caterpillar Tractor Co.*, 908 F.2d 1470 (10th Cir. 1990).

Caterpillar's SEC Filings

- "The Company is involved in litigation matters and claims which are normal in the course of its operations. The results of these matters cannot be predicted with certainty; however, *management believes, based on the advice of legal counsel, the final outcome will not have a materially adverse effect on the Company's consolidated financial position.*" (3/26/97).

ELI LILLY

Eli Lilly as Plaintiff

- In 1995, Eli Lilly filed suit against manufacturers Zenith, American Cyanamid and Biocraft, seeking an injunction that would prohibit these companies from importing and selling a generic version of Eli Lilly's Ceclor drug. A federal judge rejected Eli Lilly's motion for an injunction. *Mealey's Litigation Reports*, Sept. 18, 1995.

Eli Lilly as Defendant

- Lola Jones, 81, died from a fatal kidney-liver ailment in June 1982 after taking the arthritis pain-relief drug Oraflex for two months. Testimony revealed that Eli Lilly knew of the serious liver and kidney problems associated with the drug and went so far as to not disclose to the FDA its knowledge of 32 Oraflex-related deaths in other countries when it sought approval in the United States. The jury returned a \$6 million verdict -- all punitive damages -- against Eli Lilly for its reckless behavior. The parties subsequently settled out of court for an undisclosed amount. *Washington Post*, Nov. 22, 1983, at A1; *UPI*, May 16, 1984.

Eli Lilly's SEC Filings

- "The Company is also a defendant in other [in addition to DES and price-fixing cases] litigation, including product liability and patent suits, of a character regarded as normal to its business."

"While it is not possible to predict or determine the outcome of the legal actions pending against the Company, *in the opinion of the Company the costs associated with all such actions will not have a material adverse effect on its consolidated financial position or liquidity but could possibly be material to the consolidated results of operations in any one accounting period.*" (3/25/96).

PFIZER

Pfizer as Plaintiff

- Pfizer sued rival Miles Pharmaceutical in 1993, claiming Miles was engaged in false advertising and a misleading information program for its cardiovascular drug Adalat CC (a competitor to Pfizer's Procardia XL drug). Miles responded by filing a counterclaim against Pfizer, accusing it of making false statements about Adalat CC. In 1994, a judge found Pfizer guilty of lying about Miles and Adalat CC, and ordered the company to certify within six weeks that it had made its sales force aware of the court's findings. *Pittsburgh Post-Gazette*, Aug. 25, 1994, at D12.

Pfizer as Defendant

- Just days after being given the antidepressant drug Sinequan by her gynecologist, Laura Hermes developed "hunting jaw," a condition marked by pain, lack of control of the jaw and tongue muscles, slurred speech and drooling. Evidence revealed that Pfizer knew of adverse reactions involving Sinequan going back for more than a decade before this incident, yet never warned doctors or patients of this danger. In 1987, a Mississippi jury found Pfizer liable for Hermes' injuries and awarded her \$800,000 in damages. *Hermes v. Pfizer*, 848 F.2d 66 (5th Cir. 1988).

Pfizer's SEC Filings

- "The Company is involved in a number of claims and litigations, including product liability claims and litigations considered normal in the nature of its businesses."

"Generally, the plaintiffs in all of the pending heart valve litigations discussed above seek money damages. Based on the experience of the Company in defending these claims to date, including available insurance and reserves, *the Company is of the opinion that these actions should not have a material adverse effect on the financial position or the results of operations of the Company.*" (3/28/97).

RIDDELL, INC. and SCHUTT SPORTS GROUP (SPORTING GOODS MANUFACTURERS ASSOCIATION MEMBERS)

Schutt as Plaintiff

- In 1981, Schutt sued Riddell, complaining that the face masks on Riddell's helmets looked too much like Schutt's mask "style" and that Riddell copied its sizing designations. The trial court dismissed Schutt's claims, noting "seldom have we seen a lawsuit as unwarranted and frivolous as this one." *Schutt v. Riddell*, 673 F.2d 202 (7th Cir. 1982).
- Schutt again sued Riddell in 1989 after Riddell signed a licensing agreement with the NFL that would allow it to provide 90 percent of the league's helmets. Schutt was upset that this contract would give Riddell "unfair" exposure during televised games. The trial court sided with Riddell, finding Schutt's complaints to be "without merit." *Schutt v. Riddell*, 727 F. Supp. 1220 (N.D. Ill. 1989).

Riddell as Defendant

- In 1988, James Arnold was rendered a quadriplegic and respirator-dependant after a junior high football collision caused his spine to fracture. The jury found that the Riddell helmet he was wearing was defective and that the company's decision to not add extra padding to the helmet -- padding it included in other models -- was the cause of his injury. The jury awarded Arnold \$8 million in damages. The case was subsequently settled out of court for an undisclosed amount. *Arnold v. Riddell*, 882 F. Supp. 979 (D. Kan. 1995); *PR Newswire*, Dec. 5, 1995.

Schutt's and Riddell's SEC Filings

- No filing for "Schutt" or "Riddell" available from the SEC online service.

GILLETTE

Gillette as Plaintiff

- In 1996, Gillette sued competitor Norelco, claiming that Norelco's ads for a new electric razor were "false and deceptive" because they depicted non-electric razors as "ferocious creatures." The judge rejected Gillette's request for a ban on these ads, noting that a Gillette subsidiary had used similar tactics in another ad campaign. *Boston Herald*, Dec. 3, 1996.

Gillette as Defendant

- After nine years of legal feuding, Gillette and 53 other companies and municipalities that dumped toxic waste into a Tyngsborough, Massachusetts, landfill now on the federal Superfund environmental clean-up list finally agreed in 1992 to pay \$35.5 million to clean up the site and replace contaminated drinking water. *Boston Globe*, Dec. 24, 1992, at 48.

Gillette's SEC Filings

- "There is no action, suit, investigation or proceeding pending against, or to the knowledge of the Company threatened against or affecting, the Company or any of its Subsidiaries before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business, operations or financial condition of the Company and its Consolidated Subsidiaries, taken as a whole, or which in any manner draws into question the validity of this Agreement or the Notes."

"The Company is subject to legal proceedings and claims arising out of its business *Management, after review and consultation with counsel considers that any liability from all of these legal proceedings and claims would not materially affect the consolidated financial position, results of operations or liquidity of the Company.*" (3/22/96).

PROCTER & GAMBLE

Procter & Gamble as Plaintiff

- In 1995, Procter & Gamble sued Randy Haugen and five other Amway Corporation distributors, accusing them of spreading rumors that Procter & Gamble and its executives were involved in satanism and devil worship. The company specifically demanded "damages" for having to cope with this gossip. A federal court in Utah dismissed Procter & Gamble's lawsuit, calling a number of its claims and allegations "insufficient." *Procter & Gamble v. Haugen*, 947 F. Supp. 1551 (D. Utah 1996).

Procter & Gamble as Defendant

- Patricia Ann Kehm, 25, died in 1980 of toxic shock syndrome after using Procter & Gamble's Rely tampons for just four days. Testimony revealed that the company knew of a link between toxic shock syndrome and tampons, including a Center for Disease Control study, yet kept this product on the market. A jury awarded Kehm's husband and two young daughters \$300,000 in damages. *AP*, Dec. 2, 1983.

Procter & Gamble's SEC Filings

- "The Company is subject to various lawsuits and claims with respect to matters such as governmental regulations, income taxes, and other actions arising out of the normal course of business."

"While the effect on future results of these items is not subject to reasonable estimation because considerable uncertainty exists, *in the opinion of management and Company counsel, the ultimate liabilities resulting from such claims will not materially affect the consolidated financial position, results of operations or cash flows of the Company.*" (9/11/96).

EXXON

Exxon as Plaintiff

- In 1995, Exxon threatened to file suit against a minor league baseball team in Georgia, accusing the "Columbus RedStixx" of violating the company's trademark by using a double "x" in its logo. Though confident they had done no wrong, RedStixx officials decided to alter the logo in 1996 in order to avoid the possibility of having to face the world's largest oil company in court. *News & Record (Greensboro, NC)*, June 11, 1995, at C12; *News & Record (Greensboro, NC)*, Sept. 1, 1996.

Exxon as Defendant

- The 1989 Exxon Valdez spill that dumped 11 million gallons of crude oil into Prince William Sound ranks as one of the worst environmental disasters in history. An Alaska jury found Exxon liable for this accident and ordered the company to pay fishermen and others whose livelihoods were affected by the spill \$287 million in compensatory damages. It also assessed \$5 billion in punitive damages against Exxon for recklessly allowing the Valdez to run aground. *In re the Exxon Valdez*, No. A89-0095-CV (HRH), 1995 U.S. Dist. LEXIS 12952 (D. Alaska Jan. 27, 1995); *AP Online*, Feb. 14, 1997.

Exxon's SEC Filings

- "The ultimate cost to the corporation from the lawsuits arising from the Exxon Valdez grounding is not possible to predict and may not be resolved for a number of years."

"Claims for substantial amounts have been made against Exxon and certain of its consolidated subsidiaries in other pending lawsuits, the outcome of which is not expected to have a materially adverse effect upon the corporation's operations or financial condition." (3/8/96).

SYNTEX PHARMACEUTICALS

Syntex as Plaintiff

- In 1993, Syntex sued Apotex Inc., a Canada-based pharmaceutical company, for marketing a generic version of its arthritis drug Naprosyn. The drugs made by Apotex are approved for sale in Canada. Apotex noted that Syntex has unsuccessfully sued Apotex several times in Canada and called Syntex's U.S. action an attempt to accomplish in that country what it failed to do in Canada. A federal judge granted Syntex a limited injunction, but did not completely enjoin Apotex from exporting its product to the U.S. *Montreal Gazette*, June 20, 1993, at A5; *Syntex v. Interpharm*, Civil Action 1: 92-CV-03-HTW, 1993 U.S. Dist. LEXIS 10716 (N.D. Ga. 1993).

Syntex as Defendant

- Two infants who were fed the soy-derived Neo-Mull-Soy baby formula produced by Syntex sustained brain damage, including permanent impairment of language and motor coordination. It was revealed at trial that Syntex's decision to not add salt to its formula, an essential nutrient for brain development, was prompted solely by economic considerations. A jury awarded \$27 million, including \$22 million in punitive damages. *Duddleston v. Syntex Laboratories, Inc.*, Cook County Circuit Court, No. 80-I-57726 (Feb. 28, 1985).

Syntex's SEC Filings

- Acquired by Roche Holding Corp. in 1994; no annual report available from the SEC online service for Roche Holding (incorporated in Switzerland).

SCOTT PAPER

Scott Paper as Plaintiff

- Scott Paper's Canadian division sued Procter & Gamble in 1995, alleging that Procter & Gamble had misled consumers about the absorptive power of Bounty paper towels by advertising it as the "quicker-picker-upper." Scott Paper specifically demanded \$723,000 in special, punitive and exemplary damages. The two parties subsequently reached an out-of-court settlement, terms of which were not disclosed. *Cincinnati Enquirer*, Nov. 7, 1995, at B6; *Baltimore Sun*, Dec. 19, 1995, at 4C.

Scott Paper as Defendant

- In 1992, James Woodson of Philadelphia sued Scott Paper after he was terminated as part of what Scott said was a systematic reduction. He was with the company for 22 years. Woodson, an African-American, sued Scott Paper, contending that he was dismissed in retaliation for having filed discrimination charges after being repeatedly passed over for promotions. The jury agreed, awarding Woodson \$1.5 million in damages and back pay. *Fresno Bee*, Feb. 16, 1995.

Scott Paper's SEC Filings

- [*With regard to breast implant litigation:*] "Although the final results of these claims cannot be predicted with certainty, it is the present opinion of the Company, after consulting with counsel, that they will not have a material adverse effect on the Company's financial condition."

"In addition, the Company is involved in lawsuits and state and Federal administrative proceedings under the environmental, antitrust and equal employment opportunity laws, among others."

"Although the final results in these suits and proceedings cannot be predicted with certainty, *it is the present opinion of the Company, after consulting with counsel, that they will not have a material adverse effect on the Company's financial condition.*" (3/30/95).

UPJOHN

Upjohn as Plaintiff

- Upjohn, the maker of the baldness remedy Rogaine, sued the small Patron I Corp. in 1988 over advertisements for its Helsinki Formula hair treatment. Upjohn complained that Patron misrepresented the effectiveness of its product in stopping hair loss and promoting hair growth. A federal judge in Nevada dismissed Upjohn's claim in 1989. *Reuters Financial Service*, Nov. 17, 1988; *Business Wire*, Feb. 21, 1989.

Upjohn as Defendant

- Visiting an ophthalmologist for treatment of an eye disease, Meyer Proctor went blind in his left eye minutes after receiving an injection of Upjohn's anti-inflammation drug Depo-Medrol. The eye shriveled up and had to be removed five months later. Upjohn allegedly had promoted the injection of Depo-Medrol near the eyes despite the fact that the FDA never approved the drug for this use. There was also evidence that Upjohn knew of 23 other incidents of adverse reactions to Depo-Medrol, including three instances of blindness. The jury awarded the Proctor family \$3 million in compensatory damages and \$125 million in punitive damages, which the judge reduced to \$35 million. *Crain's Chicago Business*, Nov. 4, 1991, at 1.

Upjohn's SEC Filings

- "Various suits and claims arising in the ordinary course of business, primarily for personal injury and property damage alleged to have been caused by the use of the Company's products, are pending against the Company and its subsidiaries."

"Based on information currently available and the Company's experience with lawsuits of the nature of those currently filed or anticipated to be filed which have resulted from business activities to date, the amounts accrued for product and environmental liabilities arising from the litigation and proceedings referred to above are considered to be adequate. *Although the Company cannot predict the outcome of individual lawsuits, the ultimate liability should not have a material effect on consolidated financial position; and unless there is a significant deviation from the historical pattern of resolution of such issues, the ultimate liability should not have a material adverse effect on the Company's results of operations or liquidity.*" (3/30/95).

HORMEL FOODS

Hormel as Plaintiff

- In 1995, Hormel Foods, the maker of the luncheon meat SPAM, sued Jim Henson Productions to stop the creator of the Muppets from calling a humorous wild boar in a new movie "Spa'am." Hormel was worried that sales of SPAM would drop off if it was linked with such "evil in porcine form." A federal court judge rejected Hormel's claims. Hormel appealed, but also lost. *Connecticut Law Tribune*, Feb. 5, 1996.

Hormel as Defendant

- In 1996, the city of Davenport, Iowa, filed a lawsuit against a local Hormel Foods factory for destroying its major sewer line. For years the company negligently dumped industrial waste water into the sewer system, resulting in the corrosion of the line and eventually two collapses, the second of which dumped raw sewage. The city estimated the repair costs at \$3.3 million. *Quad City Times*, Apr. 2, 1996, at A1.

Hormel's SEC Filings

- "The Company knows of no pending material legal proceedings." (1/24/97).

CLOROX

Clorox as Plaintiff

- Clorox sued Dowbrands Inc. in 1995, complaining that Dowbrands' "Smart Scrub" liquid cleanser was too similar in name to its own "Soft Scrub" product and that this might lead to customer "confusion." Clorox also was upset that Dowbrands allegedly ran a commercial that "copied" one of its own ads that featured an animated, talking bathtub. *The Recorder (American Lawyer Media)*, June 28, 1995, at 2.

Clorox as Defendant

- Two-year-old Susan Renee Bowen sustained severe burns to her esophagus that necessitated 240 surgical procedures after she ingested Clorox's "Liquid Plumr." Testimony revealed that this product, which could dissolve flesh in a fraction of a second, had no antidote. The container also lacked a child-guard cap, though such a safety device was readily available at the time of the injury. The parties agreed on a settlement worth \$4.8 million. *Bowen v. Jiffee Clorox Corp.*, U.S. Dist. Ct., D. Kan., No. 82-2183 (Oct. 19, 1984).

Clorox's SEC Filings

- "ITEM 3. LEGAL PROCEEDINGS"
"None." (9/26/96).

AMWAY CORPORATION

Amway as Plaintiff

- In 1982, Amway threatened to file a \$500 million lawsuit against the *Detroit Free Press*, claiming that the newspaper libeled it in a story about the company's plan to misrepresent the price of products imported from Canada to avoid paying full tariffs on those items. The *Free Press* stood by its story, and Amway dropped its threat a few months later. *UPI*, Aug. 23, 1982.

Amway as Defendant

- Three-year-old Heather Ferman of St. Louis suffered severe injuries in 1981 when she drank a lye-based drain cleaner negligently left in a foam cup by an Amway distributor after a demonstration. She underwent 27 operations to repair her esophagus and stomach. Heather now has a 10 percent higher risk of developing cancer. The parties agreed on a structured settlement in 1983 for Heather's care that could be worth up to \$3 million over her lifetime. *AP*, Apr. 21, 1983.

Amway's SEC Filings

- No filing for "Amway" available from the SEC online service.

DOW CHEMICAL

Dow Chemical as Plaintiff

- In 1990, Dow Chemical subsidiary FilmTec filed a patent infringement lawsuit against Hydranautics that effectively kept the company from selling its water filtration membranes until 1992, when an appellate court ruled FilmTec's patent was not valid and lifted the injunction against Hydranautics. Hydranautics has since filed suit against FilmTec, claiming FilmTec "maliciously" pursued this false infringement claim against it in order to monopolize the market. This case is now before the Ninth Circuit. *Intellectual Property Litigation Reporter*, Nov. 13, 1996, at 14.

Dow Chemical as Defendant

- Richard and Gloria Perez were awarded \$2.37 million in damages in 1983 after Richard became permanently sterile after being exposed to the pesticide DBCP. Richard worked at the Dow Chemical plant that made DBCP. The jury found that Dow Chemical knew of the dangers of DBCP for years, yet did not adequately warn workers or consumers of its potential harm. DBCP was removed from the market after Richard Perez and other workers brought their injuries to light. *Perez v. Dow Chemical*, Cal., San Francisco County Superior Court, N. 729 596 (1983).

Dow Chemical's SEC Filings

- *[With regard to Dow Corning breast implant litigation:] "It is impossible to predict the outcome of each of the above described legal actions. However, it is the opinion of the Company's management that the possibility that these actions will have a material adverse impact on the Company's consolidated financial statements is remote, except as described below.*

"The Company's maximum exposure for breast implant product liability claims against Dow Corning is limited to its investment in Dow Corning which, after the second quarter charge noted above, is zero. As a result, any future charges by Dow Corning related to such claims or as a result of the Chapter 11 proceeding would not have an adverse impact on the Company's consolidated financial statements."

"Management believes that the possibility is remote that a resolution of plaintiffs' direct participation claims, including the vigorous defense against those claims, will have a material adverse impact on the Company's financial position or cash flows." (3/25/97).

3M

3M as Plaintiff

- In early 1997, 3M sued Microsoft, claiming that the computer company's new software program that allows users to create computer representations of yellow notes that can be repositioned on the screen is too similar to 3M's adhesive "Post-it" notes, and that consumers will "confuse" the two. This complaint is now before a federal court in Minnesota. *Atlanta Journal-Constitution*, Jan. 10, 1997, at 1F.

3M as Defendant

- A newborn infant suffered ruptures of both lungs and cardiac arrest resulting in massive brain damage after the "Baby Bird" respirator he was hooked up to malfunctioned, forcing air into his lungs without permitting the lungs to exhale. The pop-off valve that was supposed to protect the user from excessive pressurization and to sound an alarm if this occurred failed. The respirator was made by Bird Corp., a division of 3M. The parties agreed on a structured settlement, in which the family and child will receive monthly and lump-sum payments totalling \$1 million. *Kennedy v. Bird Corp.*, Utah, Salt Lake City District Court, No. C-79-1148 (June 23, 1983).

3M's SEC Filings

- [With respect to breast implant litigation:] "The company cannot determine the impact of these potential developments on the current estimate of probable liabilities (including associated expenses) and the probable amount of insurance recoveries. . . . As new developments occur, the estimates may be revised While such revisions or additional future charges could have a material adverse impact on the company's net income in the quarterly period in which they are recorded, the company believes that such revisions or additional charges, if any, will not have a material adverse effect on the consolidated financial position or annual results of operations of the company."

"There can be no certainty that the company may not ultimately incur charges . . . in excess of presently established accruals. While such future charges could have a material adverse impact on the company's net income in the quarterly period in which they are recorded, *the company believes that such additional charges, if any, will not have a material adverse effect on the consolidated financial position or annual results of operations of the company.*" (3/11/96).

NABISCO

Nabisco as Plaintiff

- Nabisco sued competitor Keebler in 1991 over its advertising campaign that claimed Keebler chocolate chip cookies contained 25 percent more chips than Nabisco's. The two parties subsequently reached an out-of-court settlement, terms of which were not disclosed. *Nabisco Brands, Inc. v. Keebler Co.*, 1991 WL 194973 (D. Ill. May 3, 1991); *Bakery Newsletter*, May 27, 1991, at 1.

Nabisco as Defendant

- In 1995, more than 50 female employees of a Nabisco Foods plant in California slapped the company with a sex-discrimination lawsuit, accusing the food maker of so restricting their restroom privileges that some workers were forced to wear diapers on the job. A number of women suffered bladder infections. Those who violated this rule were suspended, disciplined and sent home without pay. The parties reached a confidential out-of-court settlement in 1996. *L.A. Times*, Mar. 30, 1995, at B1; *L.A. Times*, Apr. 15, 1996, at B1.

Nabisco's SEC Filings

- "Nabisco is a defendant in various lawsuits arising in the ordinary course of business. *In the opinion of management, the resolution of these matters is not expected to have a material adverse effect on Nabisco's financial condition or results of operations.*" (3/10/97).

BROWN & WILLIAMSON

Brown & Williamson as Plaintiff

- Soon after the Liggett Group reached a settlement on March 20, 1997, with 22 states that would aid these states' lawsuits against the biggest cigarette makers, Brown & Williamson -- along with Philip Morris, R.J. Reynolds and Lorillard -- asked a Florida judge to rule that documents released by Liggett could not be used in that state's lawsuit against the manufacturers. These documents possibly could reveal an industry-wide conspiracy to mislead the public about smoking's health effects. The judge rejected this request, ruling that eight of the 13 documents in question showed evidence of fraud by the tobacco industry and therefore could be used as evidence by the state. *Wall Street Journal*, Apr. 22, 1997, at B11.

Brown & Williamson as Defendant

- In a landmark decision, a Florida jury in August 1996 found Brown & Williamson responsible for Grady Carter's lung cancer, and awarded Carter and his wife \$750,000 in damages. The jury found that Carter, a 66-year-old former air traffic controller, became addicted to nicotine from smoking Brown & Williamson's unfiltered Lucky Strikes brand. It also found Brown & Williamson negligent for not telling consumers they were dealing with a deadly product, even though the tobacco industry had evidence of its product's danger since the 1950s. *Mealey's Litigation Reports*, Aug. 16, 1996.

Brown & Williamson's SEC Filings

- No filing for "Brown & Williamson" available from the SEC online service.

SCHERING-PLOUGH

Schering-Plough as Plaintiff

- In 1978, Wesley-Jessen, a vision care subsidiary of Schering-Plough, sued Industrial Bio-Test Labs for \$5.3 million in damages because the lab's test results allegedly cost Wesley-Jessen FDA approval for its new soft-contact lens. The suit sought \$1.75 million in general damages and \$3.5 million in punitive damages. IBT and Wesley-Jessen settled this lawsuit in 1983 for an undisclosed amount. *Chemical Week*, May 17, 1978, at 17; *Chemical Week*, Feb. 9, 1983, at 11.

Schering-Plough as Defendant

- In 1988, 3-year-old Harkim Boyd of Manhattan suffered severe brain damage when he was given the asthma drug theophylline. Schering-Plough, the manufacturer, failed to warn of the danger of administering this drug when the patient also showed signs of a fever or viral illness. The case, which was against Schering-Plough and St. Vincent's Hospital, settled in November 1995 for \$4.6 million. *New York Law Journal*, Nov. 28, 1995.

Schering-Plough's SEC Filings

- "Subsidiaries of the Company are defendants in 149 lawsuits involving approximately 600 plaintiffs arising out of the use of synthetic estrogens by the mothers of the plaintiffs. In virtually all of these lawsuits, one being an alleged class action, many other pharmaceutical companies are also named defendants. . . . The total amount claimed against all defendants in all the suits amounts to more than \$2 billion. While it is not possible to precisely predict the outcome of these proceedings, *it is management's opinion that it is remote that any material liability in excess of the amount accrued will be incurred.*" (3/3/97).

PENNZOIL

Pennzoil as Plaintiff

- In 1984, Pennzoil launched a legal battle against Texaco over the right to purchase a majority share of Getty Oil stock. The Texas jury returned a verdict in favor of Pennzoil, awarding the company \$7.53 billion in compensatory damages and \$3 billion in punitive damages, plus \$600 million in interest. This legal saga, which saw Texaco forced to declare bankruptcy, did not come to an end until 1987, when both parties agreed to a final settlement plan. *Washington Post*, Dec. 20, 1987, at A1.

Pennzoil as Defendant

- Two 14-year-old Texas girls were fatally overcome by odorless methane gas while playing near a pipeline leak. Pennzoil and United Gas had contracted with nearby landowners to produce natural gas from their property, and the two companies had agreed to install and maintain on the pipeline the malodorizer the homeowners bought so that the gas would be odorized in the event of a leak. The jury found that the companies' failure to maintain the malodorizer led to the girls' deaths, and awarded the families \$360,000 in damages. *Blair v. Pennzoil*, Tex., Panola County District Court, No. A-7766, Feb. 12, 1981.

Pennzoil's SEC Filings

- *[Regarding restraint of trade class action proceedings:]* "Pennzoil believes that the final outcome of these matters will not have a material adverse effect on its consolidated financial condition or results of operations."

[Regarding employment discrimination litigation:] "Pennzoil believes that the final outcome of the case will not have a material effect on its consolidated financial condition or results of operations."

"Pennzoil and its subsidiaries are involved in various other claims, lawsuits and other proceedings relating to a wide variety of matters. While uncertainties are inherent in the final outcome of such matters and it is presently impossible to determine the actual costs that ultimately may be incurred, *management currently believes that the resolution of such uncertainties and the incurrence of such costs should not have a material adverse effect on Pennzoil's consolidated financial condition or results of operations.*" (3/4/97).

GENERAL ELECTRIC

General Electric as Plaintiff

- The National Broadcasting Co. (NBC), a division of General Electric, sued the Later Today Television Newsgroup in 1996, alleging that its "Later Today" news show violated NBC's "exclusive right" to the word "Today." Newsgroup's president Glenn Barbour wondered why his company was being sued; "Did [NBC] sue Gannett when they had USA Today or CNN Today? Why are they picking on a minority company? 'Today' is part of the American language." NBC ultimately won an injunction to keep the "Today" name for itself. *Reuters Financial Service*, Jan. 17, 1996.

General Electric as Defendant

- Richard and Virginia Klein's Missouri home was set ablaze on Christmas eve in 1980 after their General Electric Brew Starter coffee maker malfunctioned. The jury found defects in both the coffee maker's design and construction, and awarded the family \$600,000. *Klein v. General Electric Co.*, 714 S.W.2d 896 (Mo. Ct. App. 1986).

General Electric's SEC Filings

- General Electric's annual report does not make any statement regarding the effect of pending legal proceedings on its financial position.