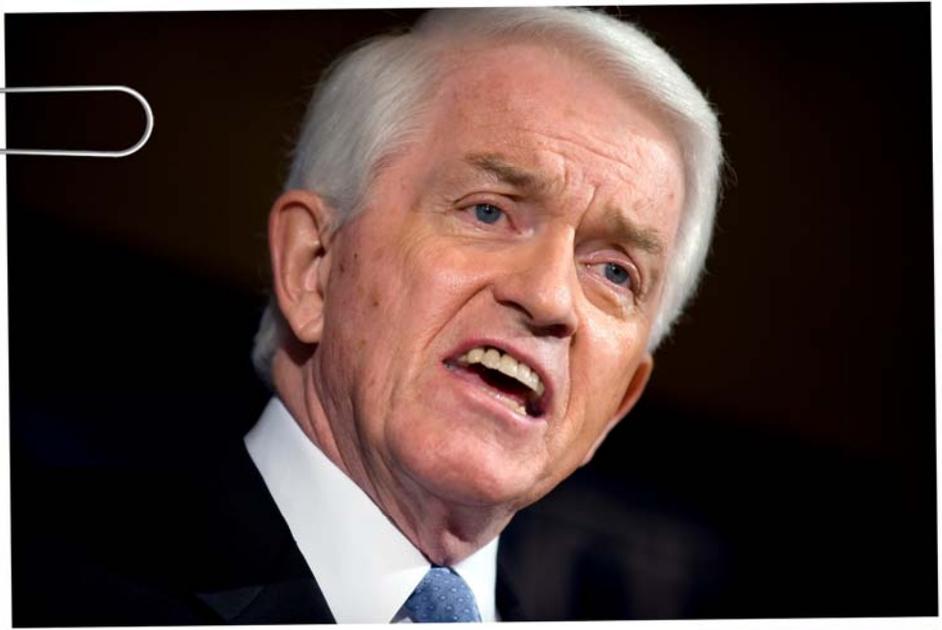


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THE CHAMBER LITIGATION MACHINE:

How the Chamber Uses Lawsuits to Keep Americans Out of Court



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Introduction

For years, the U.S. Chamber of Commerce has led the charge to undermine and destroy America's civil justice system. The Chamber has spent hundreds of millions of dollars financing efforts to close the courthouse doors to American consumers through massive lobbying campaigns, advertising and bankrolling anti-consumer political candidates. It has its own multi-million dollar affiliate, the Institute for Legal Reform (ILR), whose sole mission is to restrict the ability of individuals harmed by negligent corporations to file suit.

Yet ironically, the Chamber is also one of the most aggressive litigators in Washington, D.C., appearing in hundreds of lawsuits a year. The Chamber has its own litigation arm, the National Chamber Litigation Center (NCLC), which both files its own lawsuits and enters into the lawsuits of others more than 130 times a year.

The Chamber's surfeit of litigation has come on behalf of the same large multinational corporations that provide the organization with hundreds of millions of dollars in tax deductible membership dues. The boards of the Chamber's Institute for Legal Reform and National Chamber Litigation Center are composed entirely of large, multinational corporations that want to undermine and eliminate America's civil justice system so they won't be held accountable for their misconduct (see appendix for full list).

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

In almost every case, the Chamber's litigation on behalf of corporations has come at the expense of Americans' health or financial security. The Chamber has:

- justified the actions of Wall Street banks that drove the country's economy into turmoil;
- defended the most conceited and worst behaved CEOs and their most extravagant excesses;
- tried to force workers, instead of employers, to pay for their own safety equipment;
- filed numerous actions opposing any move to combat climate change;
- sought to shield pharmaceutical executives who skirted safety procedures that ultimately killed 11 children;
- opposed measures allowing workers to receive a rest period during a full work day;
- fought on behalf of lead paint manufacturers found to have poisoned thousands of children;
- defended corporations that discriminated on the basis of race and disability;
- and spent years defending big tobacco, asbestos companies and chemical companies found to have contaminated water and air.

In 2009, the Chamber's litigation arm appeared in 131 cases, which it proudly described as a "new record for litigation activity."¹ It did so while the Chamber's Institute for Legal Reform spent over \$40 million to reduce litigation and prevent injured Americans from getting justice in the courtroom.²

While the Chamber has decried the use of litigation when regulations fail to protect consumers, it has no problem using litigation to prevent strong regulations from taking effect. The Chamber claims it favors a strong regulatory process, stating, "regulation by litigation replaces traditional rulemaking procedures with secrecy and special deals."³ Yet the Chamber's president and CEO Tom Donohue has expressed his affection for litigation, saying, "litigation is one of our most powerful tools for making sure that federal agencies follow the law and are held accountable."⁴

Tom Donohue's Love of Litigation

Even as he spearheaded the creation of the Chamber's Institute for Legal Reform to try and close the courthouse doors to individuals, Chamber CEO Tom Donohue has long been enthusiastic about going to court himself. According to NCLC Executive Vice President Robin Conrad, "Tom loves litigation."⁵

A History of Litigation

Donohue has proclaimed that "we cannot sue our way to prosperity. We cannot sue our way to job growth. We cannot sue our way out of an economic crisis. And we cannot sue our way to better regulation."⁶ Yet when he took over the Chamber, it was reported that he was "anxious to increase litigation [by the Chamber]."⁷ In 1998, Donohue boasted of his organization's use of litigation to bully politicians, saying, "We'll try to influence [them], we'll persuade them, we'll lobby them, and if they don't listen, then we are going to sue them."⁸

Even before arriving at the Chamber, Donohue was a fan of litigation – when he was doing the suing. In 1992, while heading up the American Trucking Association (ATA), Donohue ordered a court challenge to Pennsylvania's truck tax. ATA won a \$64 million refund settlement, then demanded \$12 million in fees. Officials at the Owner-Operator Independent Drivers Association (OOIDA), which worked with ATA on this case, moved to block this request. Accusing ATA of profiteering, OOIDA president James Johnston stated: "[I]t's important that refunds go to the people who rightfully paid the taxes ... rather than ATA's litigation factory, which seems to have a bottomless pit for a purse."

When asked about this fee request, Donohue stated, "[W]e need this award to continue to fund [other] cases. It's an accepted practice that when you win a major suit ... you have a right to seek a percentage of refunds for legal fees."⁹

Donohue again defended contingency fees in a 2002 airing of *Capital Report* on CNBC, stating, "First, let me say that I will do anything in my power to protect the right of any citizen to go to the court, and I am a supporter of the contingency-fee lawsuit that allows someone that doesn't have the assets to go to court to do so."

Donohue's Personal Interests

Donohue's advocacy of litigation has benefited corporations with whom he has a personal interest. One of the Chamber's largest contributors has been AIG. Hank Greenberg, former head of AIG, sat on the Chamber's board. So it comes as no surprise that the Chamber filed a brief in defense of AIG in the Pennsylvania Supreme Court case concerning communications between AIG and its outside counsel.¹⁰

Similarly, Donohue was on the board of Qwest Communications, which the Chamber sought

to defend from a punitive damage award when a man was injured falling from a utility pole.¹¹ In 2004, a lineman working for Xcel Energy in Denver, Colorado, was rendered paraplegic after the utility pole he was working on collapsed. Xcel had entered into an agreement with Qwest Communications to use each others' utility poles and lines. Following the accident, an investigation revealed that the pole was rotten and had not been maintained. The workman sued Qwest, which in turn sued Xcel. A jury found Qwest entirely responsible for the accident and awarded the lineman \$18 million in punitive damages.¹² Not surprisingly, the Chamber filed a brief in Qwest's appeal to the Colorado Supreme Court, saying the punitive damages award was excessive.

In an October 2010 speech in Des Moines, Iowa, Donohue warned against regulations that "will fuel major increases in litigation and class action lawsuits seeking excessive damages against employers" – just moments before he announced that "litigation is one of our most powerful tools for making sure that federal agencies follow the law and are held accountable." He also boasted that the Chamber has "sued the EPA six times this year alone."¹³ His stance on suing federal agencies stands in stark contrast to a statement he made two years earlier during the economic collapse when he warned "we cannot sue our way to better regulation."¹⁴

Workers' Rights

The NCLC's self-defined role as the "voice of business" in the courts does not sound unreasonable until one realizes that, as the Chamber and NCLC see it, if business is to win, someone else has to lose. No group has suffered as much at the hands of this philosophy as those individuals who work for businesses. The Chamber has fought to push back workers' rights at every opportunity.

Mandatory Safety Equipment for Workers

When the Occupational Safety and Health Administration (OSHA) issued rules to ensure employers adopted safety standards to protect workers from job hazards like toxic chemicals and dangerous machinery, employers began forcing workers to pay for the cost of necessary safety equipment. The Chamber led the fight to prevent employers from having to pay for safety equipment when workers' groups campaigned to halt efforts that would force workers to bear the burden of safety costs. The Chamber argued that employees should be forced to bear the cost of their own safety equipment, saying that OSHA did not have authority to issue the rule because it was "not directly related to worker safety and health."¹⁵

In 2007, OSHA finally agreed to mandate that employers provide safety equipment. Experts anticipated the decision would prevent a significant number of injuries and save \$200 million in costs such as medical and insurance bills.¹⁶

Disability Discrimination

The Chamber came to the aid of Wal-Mart, the world's largest public corporation, when it tried to narrow the definition of disability to make it easier to discriminate against employees with physical or mental limitations.¹⁷ Stanley Whitney worked for Wal-Mart for three years, working an average of six days and more than 70 hours a week. In 2001, Whitney was diagnosed with "possibly serious" heart disease. He requested a reduced workload, totaling 45 hours a week. Wal-Mart refused and told Whitney he would have to work at least 52 hours a week. Eventually Whitney was forced to take a different job within the company. In 2004, Whitney sued Wal-Mart to get his old job back, asserting they breached his employment contract and violated the Maine Human Rights Act by discriminating against him based on his physical limitations.

The Chamber joined Wal-Mart in arguing that Whitney had to "show a substantial limitation on a major life activity," despite the fact that the Maine Human Rights Act required no such provision. The Supreme Judicial Court of Maine disagreed, finding for Whitney.¹⁸

Racial Discrimination

The Chamber supported General Motors in a 2002 case that accused the car manufacturer of discriminating against black employees and paying them significantly less than their white counterparts.¹⁹

Pamela Goodwin worked for GM for more than 25 years in various roles and, despite being laid off and rehired when GM closed plants, worked her way up the company. In 1991, she was promoted to the position of labor relations representative. There were four other such positions, all held by white employees, and only one of whom had equivalent educational experience as Goodwin. In 1998, Goodwin discovered that her salary had originally been set significantly lower than the other representatives and that the discrepancy had grown over the years.

When she sought an explanation from GM management, she was offered token increases as long as she signed a document stating she had received all the compensation she deserved. Goodwin refused to sign. GM then gave her a bigger increase, but which still left her salary significantly lower than her counterparts. When she refused to sign again, GM took away her normal annual raise.

The United States Court of Appeals for the 10th Circuit disagreed with GM and the Chamber, finding that Goodwin had indeed demonstrated the existence of race-based pay discrimination at GM.

Workers' Rights

In California in 2007, the Chamber participated in another significant employment case, arguing against John Paul Murphy, an employee of Kenneth Cole Productions who was forced to work through lunch breaks and rest periods for two years. The Chamber argued that businesses that routinely forced employees to work through lunch periods and rest breaks should just have to pay the extra wages, not be penalized by damages.²⁰ The California Supreme Court issued a unanimous opinion siding with the workers.

The Chamber has also entered litigation to prevent OSHA from adopting heightened standards for workers' exposure to toxic chemicals. In 2006, the Chamber joined the National Association of Manufacturers (NAM) in a challenge to OSHA's adoption of threshold limits for workplace exposure to hazardous chemicals. The U.S. Court of Appeals for the District of Columbia dismissed the petition.²¹

Toxic Substances

Lead Paint Manufacturers

For decades, paint manufacturers sold paint with lead despite evidence that exposure causes serious neurological and developmental disabilities in children. Though the government banned lead paint in 1978, it is still present in countless homes and buildings, putting children in danger. Despite the clear public health problems created by lead paint, the Chamber is using litigation to prevent the families of affected children from suing manufacturers who knowingly sold the dangerous product.

As part of its legal strategy, the Chamber is challenging attorneys general who bring public nuisance lawsuits against lead paint manufacturers with the help of private attorneys working on a contingency fee basis. Lead poisoning disproportionately affects poor and minority children who often live in older, improperly maintained housing that was painted with lead paint before it was banned.²² As a result, state governments, through Medicaid and services for special needs children, end up paying a large portion of the costs associated with lead poisoning. In order to recoup some of their states' expenses, attorneys general have initiated litigation against the paint manufacturers. The litigation is complex and expensive. In order to conserve resources, some attorneys general have partnered with private attorneys working on a contingency fee contract, which prevents taxpayers from shouldering the cost of litigation and allows state employees to work on other issues.

Knowing that states will not be able to pursue such litigation on their own, business groups are attempting to prohibit these contracts – essentially giving complete immunity to manufacturers of dangerous products. Thus, in order to prevent litigation, the Chamber has been engaging in litigation. The Chamber has filed numerous briefs in state and federal court cases over lead paint.²³

Asbestos

The Chamber has also been heavily involved in preventing asbestos litigation, entering into dozens of lawsuits in state and federal courts around the country.²⁴ The organization intervened on behalf of companies that, for decades, covered up the dangers of asbestos. Between 1979 and 2001, approximately 230,000 people died from asbestos-related causes. Yet the Chamber has done the legal bidding for corporations that used asbestos, hid its dangers from employees and consumers, and produced memos saying such callous and immoral things as “if you have enjoyed a good life while working with asbestos products why not die from it.”²⁵ The Chamber's goal in litigation is to prohibit people suffering from mesothelioma and asbestosis from holding the corporations responsible for the deadly fibers in their lungs.

Contamination Cleanup

When member corporations of the Chamber need help avoiding liability for contaminating

the environment with toxic substances, the group will help them in their battle in the courts. Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, the federal government can establish regulations for sites containing toxic materials and hold polluters accountable for damages and cleanup.

The Chamber has intervened on behalf of numerous companies challenging Superfund regulations over cleanup costs and liability. The Chamber has repeatedly come to the aid of the Canadian company Teck Cominco Metals, Ltd. over a site contaminated with heavy metals in Washington State down the Columbia River from a Teck-owned smelter in British Columbia.²⁶ The Environmental Protection Agency (EPA) ordered Teck to take responsibility for the site under CERCLA. Though the Chamber filed numerous briefs on behalf of Teck, the 9th U.S. Circuit Court of Appeals ultimately found that Teck was liable for cleanup of the contaminated site downriver from its processing plant.²⁷

Climate Change

In addition to helping companies evade liability for chemical pollution, the Chamber has actively opposed the regulation of greenhouse gases. Whether it is lobbying Congress, manipulating federal agencies or engaging in litigation, the Chamber and its member companies have made a decision that it is more profitable to continue energy production than to convert to cleaner methods.

Greenhouse Gas Regulation

The Chamber is very upfront about its efforts to prevent the regulation of greenhouse gas emissions, admitting that “NCLC is challenging the regulations as part of its multifaceted strategy to make clear that the Clean Air Act is not the appropriate vehicle for greenhouse gas regulation.”²⁸

In 2007, the U.S. Supreme Court decided a case brought by a collection of states and cities against the EPA to force the agency to regulate greenhouse gases as pollutants under the Clean Air Act. The Chamber, joined by several automobile manufacturers groups, opposed the suit, arguing that Congress never intended the Clean Air Act to be used in this way. The U.S. Supreme Court found otherwise, ruling that the EPA did indeed have statutory authority under the Clean Air Act to regulate greenhouse gases, and in fact had an obligation to do so. In response, the EPA began to categorize greenhouse gas emissions from both automobiles and stationary sources as pollutants. The Chamber filed multiple suits on the issue, arguing that the Clean Air Act was an inappropriate vehicle for regulating greenhouse gas emissions, despite the Supreme Court’s ruling.²⁹

Auto Emissions Standards

When California attempted to adopt its own, stronger, automobile emissions standards, the Chamber again filed suit, arguing that if California and other states were allowed to enforce stronger standards, manufacturers would be forced to adapt on a state-by-state basis.³⁰

That suit was not the only time the Chamber objected to its member auto manufacturers having to abide by state emissions standards. In 2008, GM and Chrysler accepted taxpayer money to avoid bankruptcy. As part of the deal for accepting the money, lawmakers included a provision that would prevent automobile manufacturers from “participating in, pursuing, funding, or supporting in any way, any legal challenge (existing or contemplated) to state laws concerning greenhouse gas emission standards.” The Chamber called this “blackmail, pure and simple” and wrote a letter to Congress saying the “denial of the right to sue would set a chilling precedent - denial of automobile manufacturers’ rights to equal protection, not to mention ripping the heart out of the First Amendment right to petition the government for a redress of grievances - and is a step Congress should not be considering.”³¹

Endangered Species

Perhaps one of the most prominent climate change issues that the Chamber has entered into is the effect that greenhouse gases have on the habitats of endangered species. In 2008, the U.S. Fish and Wildlife Service (FWS) listed the polar bear as a “threatened species.” At the same time, however, the Bush administration also issued a special rule, exempting the polar bear from the protections of the Endangered Species Act. In effect, the government had recognized that the polar bear was endangered because of the effect of climate change on its environment, while exempting from liability the corporations producing greenhouse gases that had caused the effect in the first place. However, even this state of affairs was not good enough for the Chamber, which filed suit to overturn the polar bear’s listing as “threatened.” This case is ongoing.³²

Yes Men Incident

The Chamber’s stance on climate change alienated some of its member corporations. In the summer of 2009, several companies publicly cut ties with the Chamber, citing the group’s “extreme rhetoric and obstructionist tactics” for their departure.³³ In the midst of the controversy surrounding the Chamber’s stance on climate change, a group of activists set out to draw more attention to the Chamber’s position. On October 19, 2009, a group called the Yes Men held a press conference at the National Press Club in Washington, D.C., where they pretended to be representatives of the U.S. Chamber of Commerce. The Yes Men announced that the organization had changed its opposition to climate change legislation, saying, “We at the Chamber have tried to keep climate science from interfering with business. But without a stable climate, there will be no business.”³⁴

Just days after the parody press conference, the Chamber filed a lawsuit against the Yes Men over the prank press conference. In its complaint, the Chamber said it had been “irreparably harmed” by the Yes Men’s actions and demanded unspecified damages and a jury trial.³⁵ Ironically, just two days after the lawsuit was filed, the U.S. Chamber of Commerce’s Institute for Legal Reform (ILR) held its 10th Annual Legal Reform Summit, a daylong conference at which the Chamber and its allies discuss ways to prevent people from filing lawsuits. At the summit, held in a room sponsored by AIG, participants discussed ways to reform the legal system so that people injured or killed through no fault of their own by dangerous products and services would be denied access to jury trials and damages. ILR President Lisa Rickard responded to allegations that the Chamber was being hypocritical in filing the lawsuit by saying, “We agree that when an organization is impersonated and lies are told in their name, a lawsuit should go forward.”³⁶

Foreign Atrocities

One of the Chamber's priorities is protecting U.S. corporations from being held accountable for their negligence in foreign lands, even if those actions involve the deaths of a dozen children or outright genocide.

Much of the Chamber's litigation in this area involves the Alien Tort Statute (ATS). The ATS allows foreign plaintiffs to bring suits in American courts for violations of certain international laws. The Chamber seeks to shield corporations from any such liability.

Illegal Drug Trials with Children

In one case, the Chamber sought to protect the U.S. pharmaceutical giant Pfizer after testing drugs in foreign countries where safety standards were far less stringent than in the U.S.

In 1996, Pfizer took advantage of a serious meningitis outbreak in Nigeria to test its antibiotic Trovan (trovafloxacin mesylate), which it hoped would bring in up to \$1 billion a year.³⁷ Without having to follow Food and Drug Administration (FDA) protocols for clinical testing, Pfizer was able to begin testing the drug extremely quickly. However, Trovan would later become known for causing serious, often fatal liver damage, and would eventually be withdrawn from the U.S. market. It was particularly dangerous when given to children. In Nigeria, Pfizer gave the drug to 200 children.

According to Pfizer's own reports, 11 children died, although Nigerian authorities put the total at 50.³⁸ Many more developed mental and physical deformities.

Nigerian plaintiffs took Pfizer to court, claiming the pharmaceutical giant had violated an international legal duty to obtain the informed consent of drug trial participants. The Chamber leaped to Pfizer's defense, saying that extending international law to U.S. corporations would discourage them from doing business abroad.³⁹

Defending Apartheid

The Chamber also fought the use of ATS claims made by South African plaintiffs who sought to hold corporations accountable for their role in providing technology and financing to a government that supported Apartheid. In *Balintulo, et al. v. Daimler AG, et al.*, the plaintiffs argued that the defendant corporations Daimler-Chrysler, General Motors, Ford, IBM and Fujitsu Ltd aided and abetted the South African government's engagement in Apartheid, torture, extrajudicial killing, and cruel, inhumane or degrading treatment. The governments of both the United States and South Africa have weighed in with the court on the side of the plaintiffs saying they will not seek dismissal of the lawsuit on foreign policy grounds. The Chamber filed a brief in the 2nd Circuit Court of Appeals to help protect their corporate members' interests.⁴⁰

Tobacco

The Chamber's efforts to challenge the science of climate change and pursue endless litigation in an effort to stall strict regulations closely mirror the decades-long struggle to regulate tobacco. And the Chamber has been intimately involved in that battle, too.

"Not Really About Tobacco"

Chamber President Tom Donohue decried the tobacco litigation in the late 1990s as "not really about tobacco."⁴¹ Ever since the tobacco Master Settlement Agreement, the Chamber has been actively pursuing litigation to make the issue "not really about tobacco," but about preventing people who have been harmed by Big Tobacco's deadly product and deceptive advertising from holding them accountable.

The Chamber has been particularly active in litigation that would limit the ability of people injured or killed by tobacco products and their families from recovering punitive damages, even though tobacco companies for decades intentionally misled the public about the dangers. The Chamber repeatedly filed briefs in support of Philip Morris in a lawsuit brought by the widow of a smoker who sued the tobacco manufacturer after her husband, a smoker for 42 years, died of lung cancer. The widow, Mayola Williams, argued that her husband had believed Philip Morris' deceptive marketing campaign and thought their cigarettes were safe.

When an Oregon jury awarded Williams \$79 million in punitive damages for the company's reprehensible behavior, Philip Morris appealed. The Chamber submitted no fewer than four amicus briefs on behalf of the tobacco industry with the Oregon Supreme Court and the U.S. Supreme Court as the case bounced between the two. In 2009, after nearly a decade of litigation, the U.S. Supreme Court refused to hear Philip Morris' appeal, letting the Oregon verdict stand.⁴²

Light Cigarettes

The Chamber has entered into litigation regarding the marketing of "light" cigarettes. In 1999, the U.S. Department of Justice sued the tobacco industry over its claims that light cigarettes contain less tar and nicotine than regular cigarettes. In *United States v. Philip Morris, et al.*, the government used the Racketeering Influenced Corrupt Organizations Act (RICO) to charge the tobacco industry with concocting a scheme to deceive Americans about the harmful effects of tobacco use, the addictive nature of nicotine, the health benefits of "light" cigarettes, and the manipulation of the design of cigarettes to deliver higher levels of nicotine.

In 2006, U.S. District Judge Gladys Kessler ruled in favor of the government, finding the tobacco industry had engaged in a massive scheme to deceive the public about the true nature of tobacco use. Kessler concluded, "Defendants have marketed and sold their lethal product with zeal, with deception, with a single-minded focus on their financial success, and without regard

for the human tragedy or social costs that success exacted."⁴³

In 2010, the U.S. Supreme Court denied an appeal by the tobacco industry to overturn the verdict, finding the industry had violated racketeering laws in its decades-long quest to hide the dangers of smoking.⁴⁴

Wall Street

During the last decade, the Chamber worked tirelessly to roll back financial reforms, limit the rights of shareholders and shield corporate boardrooms from transparency and accountability.

Beginning With Enron

The Chamber's efforts began with Enron, the company whose accounting fraud resulted in what was then the largest corporate bankruptcy in history. The accounting scandals of Enron and other large corporations of the time, such as Tyco and WorldCom, had a devastating impact on the U.S. economy, resulting in an estimated loss of \$5 trillion.⁴⁵ The scandals prompted the passage of the Sarbanes-Oxley Act in 2002, which attempted to set new standards for corporate boards, management and accounting firms.

The Chamber "pay-to-play" membership scheme – where it charges its members extra for special lobbying and advocacy efforts – had long turned the Washington lobby into a hired gun for corporations such as AIG, Enron and Qwest, poster children for massive corporate fraud. Opposing financial reforms became the Chamber's number one priority. Chamber CEO Donohue laid out the organization's philosophy, saying, "The free market cannot – and will not – tolerate government controls over when and how people invest their money ... Improving transparency and accountability is one thing. Eliminating risk and investment choices is quite another."⁴⁶

Taking on the SEC

The Chamber did everything it could to roll back regulations and eliminate accountability, which included engaging its litigation arm against the regulators themselves. In 2005, the Chamber filed a lawsuit against the Securities and Exchange Commission (SEC) to block a reform measure designed to protect the interests of consumers investing in mutual funds. According to Reuters, "the chamber sued the SEC to try to block implementation of a mutual fund governance rule that requires that fund board chairmen, and 75 percent of fund directors, be 'independent,' or free of direct ties to fund managers."⁴⁷

Since 1998, the Chamber has spent at least \$380 million to lobby on behalf of Wall Street.⁴⁸ Big givers such as AIG and Enron received the Chamber's full service. Even after Enron had filed for what was then the largest corporate bankruptcy in U.S. history and caused tens of thousands of workers to lose their jobs and their pensions, the Chamber came to the defense of former CEO Jeffrey Skilling. The Chamber filed a brief defending Skilling before the U.S. Supreme Court in *U.S. v. Skilling*, arguing that enforcing the fraud laws under which Skilling had been convicted would deter legitimate business dealings. The Chamber also intervened on behalf of top Merrill Lynch officials convicted for their involvement in the Enron scandal, and argued that they deserved lighter sentences.⁴⁹ AIG funneled tens of millions of dollars from its charitable affiliates to the Chamber, and in return received a lobbying and PR campaign

pushing Wall Street's case. At the same time, AIG and its CEO Hank Greenberg were being investigated by numerous agencies on a variety of fraud charges.

After the Economic Crisis

Once the economic crisis and subsequent recession hit, the Chamber's deregulation push was replaced, incredibly, by a demand that the U.S. government bailout corporations. And even in this bailout, the Chamber lobbied to include provisions that gave complete immunity to those who committed fraud, protected executive golden parachutes, and deprived families from protecting their mortgages through bankruptcy.

In response to the financial crisis, Congress worked to pass financial regulatory reform legislation to prevent the kind of crisis that led to the collapse of the economy. The U.S. Chamber fought the legislation every step of the way. They even cited how its lobbying efforts "significantly slowed" the passage of the legislation as one of its top accomplishments for 2009.⁵⁰

One issue that particularly bothered the Chamber was the establishment of a Consumer Financial Protection Agency (CFPA), which would write and enforce rules regarding consumer financial products like mortgages and credit cards. The Chamber even created a website called stoptheCFPA.com to try to derail the legislation. Tom Donohue promised that the Chamber "will continue to work vigorously through all available avenues – regulatory, legislative, and legal" to keep the legislation from being fully implemented.⁵¹ Ultimately, Congress passed the legislation and it was signed into law by President Obama on July 21, 2010.⁵²

The Chamber's first legal action against the financial reform overhaul came in September 2010, when it filed a petition in the U.S. Court of Appeals for the District of Columbia regarding an SEC rule that would allow shareholders to remove members of corporate boards of directors.⁵³ The Chamber called the SEC rule a "special-interest rule [that] will give a small group of special-interest activist investors significant leverage over a business' activities."⁵⁴

The Chamber represents the largest corporations – not small businesses or the American public. The lobbying behemoth's work forcing through deregulation and eliminating transparency eventually resulted in the 2008 economic crisis, costing taxpayers hundreds of billions of dollars. This downturn only reinforced the need for accountability inside America's biggest corporations, which the Chamber has consistently opposed.

Conclusion

There is no greater foe to the American civil justice system than the U.S. Chamber of Commerce. The Chamber has spent hundreds of millions of dollars trying to eviscerate the country's court system and free its multinational corporate members from the specter of accountability.

Yet at the same time, the Chamber has proved to be one of Washington's most prolific litigation machines, filing lawsuits and entering briefs at a frenetic pace. Rare is the case involving any kind of business issue that does not prompt a filing from the Chamber's litigation arm.

This hypocrisy – closing the courthouse door on the one hand, while using it liberally for its own agenda – is no accident. It is the double standard that lies at the core of the U.S. Chamber of Commerce. From the first months its CEO Tom Donohue took office, the Chamber has espoused one rule for corporations and another for everyone else.

To the Chamber, the courthouse is not the place for an injured worker, a defrauded investor or a harmed child to seek justice. Instead, the courthouse is a place for Wall Street executives to plead innocence, for pharmaceutical executives to evade responsibility and for the biggest industries in the land to sue their own government to get an easier ride.

It is, of course, the right of the Chamber to seek what it believes to be justice in a court of law. Though it may represent the most dissolute of corporate interests, this remains its right. However, the Chamber must learn that this right to justice belongs not just to their organization, or big business generally, but to all Americans.

Appendix

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General Motors Corporation

Edward B. Rust
Chairman and CEO
State Farm Mutual

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

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

Lawrence V. Stein
Senior Vice President and General Counsel
Wyeth

Martin J. Sullivan
CEO
American International Group

Mary H. Terzino
Assistant General Counsel
Dow Chemical, Co.

Mark Treanor
General Counsel
Wachovia Corporation

James Turley
CEO
Ernst & Young

Craig D. Vermie
General Counsel
Aegon

Allen P. Waxman
General Counsel
Pfizer

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

Patricia Hatler
Executive Vice President, Chief Legal Officer and
Governance Officer
Nationwide Mutual Insurance Company

G. Edison Holland
Executive Vice President, General Counsel and
Secretary
The Southern Company

Charles James
Executive Vice President
Chevron

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

Christopher C. Mansfield
Senior Vice President and General Counsel
Liberty Mutual Group

Charles W. Matthews
Vice President and General Counsel
ExxonMobil Corporation

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

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

Bradford W. Rich
Senior Vice President and General Counsel
OneBeacon Insurance

John Spinnato
Vice President and General Counsel
Sanofi-Aventis

Jane Sherburne
General Counsel
Citigroup – first half of the year
Wachovia – second half of the year

Note: ILR Board Members were reported in ILR's 2008 990, the most recent year for which information is publicly available.

Endnotes

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