

KOCH AND ASBESTOS LEGISLATION

Asbestos, a lethal toxin that corporations still use, kills 10,000 people every year. Because certain asbestos diseases can lead to very quick death once diagnosed, unnecessary delay helping these victims – many of whom are military veterans - can have tragic consequences.

Legislation is circulating in Congress and in states that would invite the widespread invasion of privacy of asbestos victims and their families while creating senseless delays compensating them.¹

In Congress, the legislation is called the so-called “Furthering Asbestos Claim Transparency Act” or FACT Act (H.R. 982 and S. 2319). At the state level, similar legislation has been circulating for several years by the American Legislative Exchange Council (ALEC). Both efforts are linked to the Koch brothers.

GEORGIA-PACIFIC

Koch has a direct financial interest in limiting the rights of asbestos victims and it has been aggressively attempting to do so for nearly a decade.

- Since 2005, Koch Industries has owned paper manufacturer Georgia-Pacific, which has been sued by hundreds of thousands of asbestos victims for poisoning them with the company’s asbestos-containing joint compound.²
- In 2005, Georgia-Pacific devised a strategy to defend itself against asbestos lawsuits by funding and controlling studies falsely concluding Koch’s type of asbestos does not cause cancer³ (even though the Occupational Safety & Health Administration, the Environmental Protection Agency, the International Agency for Research on Cancer (IARC) and the World Health Organization say it does).⁴
- An appellate judge recently found that by hiding its role in funding and controlling these studies, Georgia-Pacific may have engaged in fraud in order to evade responsibility to asbestos victims. Specifically, the court found, “a sufficient factual basis for a finding that the relevant communications could have been in furtherance of a fraud... it is of concern that GP's in-house counsel would be so intimately involved in supposedly objective scientific studies, especially in light of GP's disclosures denying such participation.”⁵

THE U.S. CHAMBER OF COMMERCE

Koch has not relied on litigation alone to limit its responsibility to asbestos victims; it has also been part of leadership of the largest business lobby pushing the FACT Act.

- In January 2014, the U.S. Chamber of Commerce – the nation’s largest lobby group - identified its two legislative “civil justice” priorities. One was passing the FACT Act.⁶
- Mark Holden, Senior Vice President, General Counsel and Secretary for Koch Industries, has been part of the Chamber’s “civil justice” leadership, serving as a board member of the Chamber’s Institute for Legal Reform in 2012, and has served in this capacity since at least 2008.⁷

ALEC

Koch is also actively involved in the task force at ALEC that created model asbestos legislation, which is circulating in a number of states and already enacted in three.

- In 2007, ALEC’s Civil Justice Task Force adopted model state legislation entitled the “Asbestos Claims Transparency Act,” which, similar to the FACT Act, manipulates state laws to delay and deny justice to asbestos victims. Versions of this legislation have passed in Oklahoma, Ohio and Wisconsin, and have been introduced in Illinois, Louisiana, Mississippi, Pennsylvania, Texas and West Virginia.
- Koch Industries has been a key player on ALEC’s Civil Justice Task Force.⁸ In 2011 alone, three Koch officials, including one from Georgia-Pacific, participated on this task force.⁹
- Koch Industries is also an important ALEC funder. In 1996, the Koch brothers provided ALEC with a half million dollar loan,¹⁰ and although public data is not available, some have written that Koch’s contribution to ALEC likely exceeds \$1 million.¹¹

NOTES

¹ Editorial, “One-Sided Bill on Asbestos Injuries,” *New York Times*, June 19, 2013.

² <http://www.publicintegrity.org/2011/04/06/3936/kochs-web-influence>

³ The company implemented a plan to fund scientific studies to show that chrysotile asbestos, the type of asbestos contained in Georgia-Pacific products, does not cause cancer. To carry out this plan, Georgia-Pacific gave a new title of “litigation consultant” to a current employee named Stewart Holm. In this new role, Holm reported directly to Georgia-Pacific’s legal office. Holm, in turn, hired David Bernstein to conduct tests and write articles to be published in scientific journals. Together, Holm and Bernstein published over a dozen articles that cast doubt on the ability of chrysotile to cause asbestos disease.

⁴ See, e.g., <https://www.osha.gov/SLTC/asbestos/>; <http://www.epa.gov/oecaagct/ttox.html>; and, <http://monographs.iarc.fr/ENG/Monographs/vol100C/mono100C.pdf>

⁵ *In re New York City Asbestos Litigation*, 109 A.D.3d 7, 966 N.Y.S.2d 420 (June 6, 2013), page 423. The court found that Stewart Holm (see *supra*, note 3) co-authored nearly all of the studies, which were intended to cast doubt on the capability of chrysotile asbestos to cause cancer. On the two articles that he did not co-author, he and GP’s counsel participated in lengthy “WebEx conferences” in which they discussed the manuscripts and suggested revisions. Despite this extensive participation, none of the articles disclosed that GP’s in-house counsel had reviewed the manuscripts before they were submitted for publication. Two articles falsely stated that “[GP] did not participate in the design of the study, analysis of the data, or preparation of the manuscript.” For articles lead-authored by David M. Bernstein, Ph.D., and co-authored by Holm, the only disclosure was that the research was “sponsored” or “supported” by a grant from GP. The articles did not disclose that Holm was specially employed by GP for the asbestos litigation or that he reported to GP’s in-house counsel. Furthermore, there were no grant proposals, and Dr. Bernstein was hired by GP on an hourly basis. Nor did the articles reveal that Dr. Bernstein has been disclosed as a GP expert witness in NYCAL [New York City Asbestos Litigation] since 2009, that he had testified as a defense expert for Union Carbide Corporation in asbestos litigation, or that he had been paid by, and spoken on behalf of, the Chrysotile Institute, the lobbying arm of the Quebec chrysotile mining industry. Although GP belatedly endeavored to address the inadequacies of certain of its disclosures, its corrections failed to acknowledge its in-house counsel’s participation and did not make clear that Dr. Bernstein’s testimony as an expert witness preceded the publication of the first GP reformulated joint compound article in 2008.

⁶ <https://www.uschamber.com/speech/state-american-business-2014-remarks-thomas-j-donohue-president-and-ceo-us-chamber-commerce>

⁷ <http://www.justice.org/cps/rde/xbcr/justice/ChamberLitigationMachine2010.pdf>; Institute for Legal Reform IRS Form 990, retrieved from www.guidestar.org

⁸ http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/civil_justice_35-day_mailing%20San%20Diego.pdf

⁹ <http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/35daymailing.cj.stfs%20Ohio2011.pdf>; <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=8078765>.

¹⁰ http://www.sourcewatch.org/index.php/Koch_Industries

¹¹ <http://www.thenation.com/article/161973/koch-connection>