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HOW CORPORATIONS ABUSE OUR CIVIL JUSTICE SYSTEM

Frivolous lawsuits? Lawsuit abuse? Let take a look at who's *really* abusing the legal system:

Disney. In November 1998, a 46-year-old woman suffered a hemorrhage and underwent emergency brain surgery after going on Disneyland's Indiana Jones Adventure Ride. When the victim sued, Disney refused to turn over information about riders who had suffered similar injuries at the company's theme parks, prompting the judge to levy monetary sanctions against Disney twice within three months. Dan Whitcomb, "Disney Settles Brain Injury Lawsuit Over Park Ride," *Reuters*, June 21, 2001; Dan Whitcomb, "Disney Says Will Hand Over Brain Hemorrhage Records," *Reuters*, June 10, 2001; Kimi Yoshino, "Seeing 'Bad Faith' by Disney, Judge Awaits Injury Data," *Los Angeles Times*, June 8, 2001.

Only a year and half earlier, Disney had been sanctioned over \$7,000 for denying the existence of injury logs, refusing to turn over records and committing other discovery abuses in a case involving another woman who claimed that Disney's Indiana Jones ride caused her brain to hemorrhage. Kimi Yoshino, "Seeing 'Bad Faith' by Disney, Judge Awaits Injury Data," *Los Angeles Times*, June 8, 2001; Norma Meyer, "Disney ride put her life in a spin; Woman claims brain damage, sues theme park," *San Diego Union-Tribune*, February 1, 1999.

DuPont. This company has been sanctioned numerous times for withholding and destroying evidence showing that its fungicide Benlate 50DF ruined crops. In March 1995, a Hawaii state court lifted protective orders from certain DuPont documents and fined the company \$1.5 million for concealing soil testing data and other relevant information. *Kawamata Farms, Inc. vs. United Agri Products et al.*, 86 Haw. 214 (1997); Milo Geylin, "DuPont Lawyer, Outside Firm Rebuked," *Wall Street Journal*, September 6, 1996.

In August 1995, a Georgia federal court fined DuPont \$115 million for withholding the same soil data, citing Dupont's conduct as **"the most serious abuse in its years on the bench."** Judge J. Robert Elliot found that DuPont had engaged in a **"scheme"** that was **"willful, deliberate, conscious, purposeful, deceitful, and in bad faith."** In exchange for ending a criminal investigation into whether it had committed fraud, DuPont agreed to pay \$10 million to four Georgia law schools and \$1 million to endow an annual symposium on professionalism and legal ethics. "Unique Consent Decree Ends Discovery Abuse Issue in Benlate Litigation," *Federal Discovery News* (February 1999); *Bush Ranch v. E.I. du Pont de Nemours & Co.*, 918 F. Supp. 1524 (1995).

In a third case, a Dade Circuit Court Judge called DuPont's behavior **"a pattern, it is willful, it is deliberate and it is ... so atrocious that it shocks the conscience of this**

court.” The case settled for a confidential amount, and all records were sealed. Jan Hollingsworth, “Suits shed light on DuPont’s Benlate,” *Tampa Tribune*, February 25, 2001; “DuPont settles 20 cases over Florida damage; Deal follows Dade judge’s dismay over company’s pretrial treatment of growers alleging harm from Benlate,” *Miami Daily Business Review*, August 9, 1996.

Ford. A two-month-old suffered severe brain injuries in 1990 when the back of her mother’s car seat collapsed on her after their Ford Tempo was rear-ended. When the girl’s parent’s alleged the seat was defectively designed, Ford continuously stalled the discovery process by filing numerous objections, providing evasive answers to interrogatories and failing to produce requested documents and witnesses. The company was concealing over 120,000 pages of relevant information (which Ford turned over only upon threat of court sanction). In condemning Ford’s behavior, Circuit Court Judge Dennis C. Kolenda wrote, **“What plaintiffs’ counsel discovered when they read those [120,000 pages of] documents was disgusting; no other word would be accurate. For over two years, Ford had concealed very significant documents and information, and, worse, had blatantly lied about those documents and about the information in them; any word other than ‘lied’ would understate what Ford did...this Court had to agree that an outrageous fraud has been perpetrated by Ford.”** A Michigan appeals court sent the case back to the trial court for an evidentiary hearing on the appropriateness of the sanction. *Traxler v. Ford Motor Co.*, 227 Mich. App. 276 (1998); *Traxler v. Ford Motor Co.*, No. 93-84039-NI (Kent County Cir. Ct., Mich., order January 24, 1997).

General Motors. Time and again General Motors has failed to comply with pre-trial discovery. For example, in a fuel tank defect case, GM removed 2,300 documents from boxes without the court’s permission, suppressed data and suborned perjured testimony. Fulton County State Court Judge M. Gino Brogdon found GM and its attorneys guilty of **obstructing justice and committing fraud on the court.** Trisha Renaud and Jonathan Ringel, “GM Settles Liability Claim,” *Fulton County Daily Report*, September 27, 1999, discussing *Bampoe-Parry v. General Motors Corp.*, No. 98VS138297 (Fulton County Ct., Ga., order September 7, 1999); Bill Rankin, “Did GM and Its Lawyers Suborn Perjury in Ga. Case?” *National Law Journal*, October 26, 1998, discussing *Bampoe-Parry v. General Motors Corp.*, No. 98VS138297 (Fulton County Ct., Ga., order October 8, 1998).

Similarly, in a case alleging defects in a Pontiac Grand Am, GM employed various delay tactics for nearly two years, including nonresponsive answers to requests for production of documents, motions for protective orders over “trade secret” information, claims of privilege without submitting evidence to support such protection and concealment of court-compelled documents from the plaintiffs. *Conkle et al. v. General Motors Corp.*, 226 Ga. App. 34 (1997).

For other recent examples, see “GM Ordered to Produce ‘Black Box’ Data,” *Automotive Litigation Reporter*, May 16, 2000 (a Georgia state court judge gave GM 30 days to produce crash data it withheld for more than two years); *Bishop v. General Motors Corporation*, No. CIV-94-286-B (E.D., Okla., order September 6, 1995)(finding that “the disobedience by GM is both willful and intentional,” a court prohibited GM from introducing and offering for admission any exhibits during the course of the trial).

Horizon/CMS Healthcare Corporation. In litigation over patient neglect, Horizon/CMS Healthcare Corporation hid over 15,000 boxes of records from the plaintiff. Sanctions followed an earlier fine of over \$40,000 for discovery abuses. Horizon/CMS failed to

comply with discovery in another nursing home case when it refused to produce copies of all relevant insurance policies the corporation had in its possession. The company continued to stall after facing a fine and being ordered to hand over the requested documents. Rick Casey, "State rep's heroics: He quit a lawsuit," *San Antonio Express*, February 28, 2001; "Texas Federal Jury Orders Horizon To Pay \$ 312 Million To Fort Worth Family," *Mealey's Litigation Report: Nursing Homes* (February 2001), citing *Fuqua v. Horizon/CMS Healthcare Corp.*, No. 4:98-CV-1087-Y (N.D. Tex., verdict February 9, 2001).

Shell Oil. In a suit brought by a man suffering from asbestos-related cancer, Shell Oil withheld over 100 boxes of relevant documents that showed the company knew about the cancer-causing effects of asbestos. The hidden documents came to light during the last week of trial only after an asbestos attorneys' network led the plaintiff's lawyers to data uncovered in earlier litigation against Shell. Calling Shell's conduct "**deliberate, contumacious and unwarranted disregard of this Court's authority,**" the trial judge sanctioned the company for discovery abuse. "Illinois Jury Awards \$34 Million to Former Roofer with Mesothelioma," *Asbestos Litigation Reporter*, June 8, 2000, citing *Hutcheson v. Shell Wood River Refining Co. et al.*, No. 99-L 450 (Madison County Cir. Ct., Ill., verdict May 20, 2000); "Illinois Jury Awards Former Roofer \$34M, Believed To Be The Largest Single Plaintiff Verdict," *Mealey's Litigation Report: Asbestos*, June 2, 2000.

Toys 'R' Us. A 52-year-old woman was struck by falling merchandise while Christmas shopping at Toys 'R' Us with her husband and two-year-old grandson. When the woman and her husband sued, the company denied that it kept track of the number of similar accidents at its other stores. Based on his own investigation, the plaintiff's attorney learned that Toys 'R' Us had in fact compiled such a database. Documents produced after a court order showed that there had been 316 prior similar accidents during the three years preceding the plaintiff's injury. The trial judge sanctioned Toys 'R' Us for discovery abuse. *Nguyen v. Toys 'R' Us-Texas et al.*, No. 1999-18667 (Harris County Dist. Ct., Tex., verdict November 15, 2000).

Wal-Mart. Retail giant Wal-Mart is notorious for flouting the rules of discovery. According to the *National Law Journal*, between 1998 and 2000 there were 52 sanctions against the company, whose behavior courts have characterized as "corrupt" and "nefarious," with one judge saying, "**Rarely has this Court seen such a pattern of deliberate obfuscation, delay, misrepresentation, and downright lying to another party and to a Court.**" Wal-Mart has consistently denied any misconduct, even issuing a statement to *60 Minutes* that the company has simply been overwhelmed by "frivolous" requests for evidence, which it hoped to better handle with the help of an outside law firm. Despite promising to mend its ways, in February 2001, Wal-Mart was once again fined for engaging in "repeated and protracted concealment of relevant documents and witnesses" in a product liability case. Kevin Moran, "Galveston judge admonishes Wal-Mart for pretrial misconduct," *Houston Chronicle*, February 14, 2001; Bob Van Voris, "Wal-Mart Mending Its Ways?" *National Law Journal*, January 17, 2001; "Wal-Mart; Legal Battles Facing The Retail Chain," *60 Minutes*, CBS News Transcripts, January 7, 2001.

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