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Profits vs People

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Abstract

In 2012, when Mitt Romney ran for president he received a good deal of criticism for saying that corporations were people even though he was correct at least in terms of several constitutional provisions. One thing about corporations is true, however, they are run by corporate executives, people—human beings. Unfortunately, these same corporate executives sometimes make decisions that they know or should know will be detrimental to the health, safety or lives of other human beings in order to secure greater profits. In short, they decide to hold profit over people. Cases involving such decisions and the consequences, if any, to those making those decisions are the focus of this article.

Keywords: Constitutional provisions; Greater profits; Corporatedecisions

Introduction

Sadly, in researching this article it was amazing to find the number of cases where such cooperate decisions were made. To discuss even a significant proportion of those cases would be more than a single treatise let alone an article so a selection process was necessary. Some cases not discussed here are more egregious than those selected; others less. Some discussed morefamous; others less so. However, for virtually all there are three basic themes. First, corporate executives made decisions that put other human beings at risk. Second, when victims of these decisions sought redress, additional decisions were made to hide corporate malfeasance in order to avoid accountability. Third, in almost all cases, any eventual accountability was disproportionally lower than the harm caused, especially for the corporate executives that made the decisions.

Profit over People Cases

Purdue pharma and the opioid crisis

With the possible exception of the cigarette companies, Purdue Pharma, the manufacturer of OxyContin, may well have the highest body count of all corporations choosing profit over people. Some 470,000 people have died from opioid overdoses over the past two decades; over 230,000 from prescription opioids. What makes this more horrific is that muchof this astounding death toll was accomplished by a single corporation, and in fact, by a single family—the Sackler family, owners of Purdue Pharma.

Opioids have been around for thousands of years. Opium poppies were first cultivated in lower Mesopotamia in 3400 BC. Addiction and overdoses did not become a significant problem in the United States until morphine was used to treat wounded soldiers in the Civil War. The real opioid crisis did not begin in the U.S. until the development of OxyContin by Purdue Pharma in 1995 and the company's more than aggressive marketing of the product. Purdue Pharma, without conducting any clinical tests, started marketing OxyContin in 1996 as safer and less subject to abuse than other opioids. This representation was patently false. The active ingredient in OxyContin is oxycodone which is twice as potent as morphine and has an abuse potential similar to heroin.

Purdue Pharma's marketing blitz was assisted by the FDA's approval of a single sentence on OxyContin's initial labeling which stated: "Delayed absorption as provided by OxyContin tablets, is believed to reduce the abuse liability of a drug." In marketing OxyContin, Purdue Pharma used some methods that were reasonable, others that were unethical and still others that were patently illegal. Those methods were successful. By 2001 OxyContin had become the most frequently prescribed brand-name opioid in the United States. Over the life of OxyContin sales, Purdue Pharma reaped in over $30 billion. Even as the number of opioid deaths were increasing astronomically, Purdue Pharma, and Richard Shackler in particular, kept pushing its sales people to sell more and more OxyContin at higher and higher strengths.

Once the opioid crisis was in full swing, Purdue Pharma became the focus of both state governments burdened with the consequences of the crisis as well as the federal government being charged with responsibility of solving the problem. The company was eventually subject to a federal indictment and on November 24, 2020 plead guilty to conspiracies to defraud the United States and violate the anti-kickback statute. The plea agreement included an $8 billionsettlement under which the company was to be dissolved and money used for opioid treatment and abatement programs. It also included a $225 million civil settlement with the Sackler family, a small fraction of the over $10 billion the family withdrew from Purdue Pharma during the opioid crisis. Despite critics who think Sackler family members should be criminally prosecuted, as of this writing they have escaped personal accountability. Corporate decisions were made to secure more profits while hundreds of thousands of people died and nobody went to jail.

Ford pintos' exploding gas tanks

One the most famous cases involving corporate executives making decisions favoring profit over the health, safety and lives of their customers is the Ford Pinto case—a case which often finds its way into university classrooms. This fame is primarily based on what has become known as the "Ford Pinto Memo" and its cost-benefit analysis, the significance of which is in considerable dispute. The facts of the case, however, are not in dispute. These facts are discussed in great detail in Grimshaw v. Ford Motor Company.

Grimshaw was the appeal of a case where in 1972 a Pinto's gas tank exploded as the result of a rear end collusion burning the driver to death and causing the 13 year old passenger tosuffer permanently disfiguring burns. After a six month trial, the jury returned a verdict awarding the driver's family $559,680 in compensatory damages and awarding the passenger $2,516.000 in compensatory damages and $125 million

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in punitive damages. The court reduced the $125 million award of punitive damages to $3.5 million on the condition that Ford's motion for a new trial be denied. We can now turn to the facts that led the jury to so manifestly demonstrate its displeasure with Ford.

In 1968, led by Lee Iacocca, then Ford Vice President, Ford embarked on a rushed project to get a small, inexpensive car on the market. As the project was a rush, rather than starting with marketing and engineering studies before proceeding with the styling of a vehicle, this project went in reverse with styling coming first. Disregarding the practice of other subcompact car manufactures to have the gas tank over the rear axle, Ford's styling option was to have the gas tank behind the rear axle "leaving only 9 or 10 inches of "crush space"—far less than in any other American automobile." Compounding this design flaw, the Pinto's differential housing had an exposed flange and a line of exposed bolt heads—protrusions sufficient to puncture a gas tank driven forward against the differential upon rear impact.

Ford conducted numerous crash tests of the Pinto. These tests revealed that the Pinto as designed could not withstand a 20 miles-per-hour rear end collusion without fuel leakage, and in at least one test at 21 miles-per-hour test, the gas tank was punctured by the bolt heads on the differential. Other tests with a modified and reinforced version of the Pinto proved safe. Investigations by Ford engineers into fixing the Pinto's gas tank problem determined that therewere multiple ways to attack the issue. This could be done at the low end of about $2 per car to a high of just over $15—the latter solution would enable the Pinto to withstand a 34 to 38 mile-per-hour rear end collusion with no gas leakage. The crash test results and potential fix information was funneled up the line to Ford's top management. Those Ford executives decided not to fix the Pinto's gas tank problem in order to save money. In short, these individuals decided they would rather take a chance on killing or maiming people than spending a few dollars to avoid that possibility. One can see how the jurors in Grimshaw, almost all of whom probably were car buyers, might not like that idea.

At least 27 people burned to death in Pinto rear end collusions and an unknown number were injured. The dead included three young women in Indiana who died in a rear end collusion/gas tank explosion. Ford was charged with reckless homicide in that case and acquitted. Numerous lawsuits were filed against Ford arising out of the Pinto's obvious design defect and millions of dollars—which Ford could easily afford—were paid out in damages. However, none of the corporative executives who made the appalling decision to sell what they knew was a dangerous vehicle were individually held accountable.

Bayer decisions lead to aids in hemophiliacs

The Bayer contaminated blood case is similar to the Ford Pinto case in that corporate executives decided to sell products that they knew or should have known would harm other people—a basic theme throughout these cases. The difference is that in Bayer's case the results were much more catastrophic, especially considering intended users of its products. As a result of Bayer's unconscionable conduct hemophiliacs around the world contracted the human immunodeficiency virus (AIDS); many died and those that survived had to live with an incurable disease.

Although spreading around the world since the 1960s, AIDS first came to the United States in 1970 and did not become publically known until the early 1980s. A division of Bayer, Cutter Biological, manufactured Factor VIII concentrate, a blood clotting agent used by hemophiliacs to help in clotting blood. In July of 1982, the CDC started to warn that blood concentrates were likely causing AIDS in hemophiliacs. In January 1983, a manager at Cutter stated in a letter that there was strong evidence AIDS was being passed on through its plasma products. Recognizing the need to compete with other blood companies who were producing a heated AIDS free version of Factor VIII, on February 29, 1984, Cutter obtained authorization to make the heated alternative. The company's next move was really reprehensible.

Once Cutter started manufacturing the heat treated AIDS free Factor VIII, it was left with a large inventory of the older contaminated version. Also, the heated product was more expensive to produce. To protect its profits Cutter knowingly continued to sell its inventory of contaminated Factor VIII and even manufactured additional supply of the contaminated product in order to fulfill several fixed price contacts. However, rather than sell the older version in the United States which Bayer executives thought could turn out to be more problematic, it sold the product overseas to such countries as Argentina, Indonesia, Japan, Malaysia, and Singapore. As a result, tens of thousands of hemophiliacs around the world contracted AIDS and thousands died.

Eventually in 1997, Bayer agreed to a settlement of a class action brought by AIDS infected hemophiliacs pursuant to which it paid $300 million into a compensation fund. Certainly, this amount was but a drop in the bucket considering Bayer's net worth and the extent of the damage it had knowingly caused. As criminal as this Bayer-Cutter behavior was, nobody was prosecuted. Thousands of people died and no corporate executives were held accountable.

A.H. Robbins and the dalkon shield disaster

The Dalkon Shield was an intrauterine device (IUD), a contraceptive device designed to prevent pregnancy. It was sold by A.H. Robbins from 1971 until pulled off the market in 1974. It was originally marketed by a small company, the Dalkon Corporation. One of the developers and owners of the device, Dr. Hugh J. Davis, conducted a very flawed study of the device indicating that the product had a pregnancy rate of 1.1%, lower than the pill and other IUDs on the market. Dr. Davis had an article published touting the lower pregnancy rate without disclosing his financial interest in the device. Later, more scientific studies found the actual rate to be between 5% and 10%. A.H. Robbins purchased the Dalkon Corporation, made some changes in the product, and even knowing the actual pregnancy rate was much higher than 1.1%, marketed the IUD without any additional testing emphasizing the bogus lower rate and claimingit was safer than other contraceptive methods. This false and deceptive marking program was the least of A.H. Robbins transgressions.

IUDs are designed to be inserted into the uterus, which is generally sterile, with a tail hanging down into the vagina, which can be prone to containing bacteria. The tail of the Dalkon Shield consisted of several encased filaments with an open top and bottom. Six months before the Dalkon Shield was put on the market by A.H. Robbins, it knew that the design of the Dalkon Shield tail could allow bacteria to wick up from the vagina to the uterus and cause infections. The company executives decided that they did not want to spend the money to correct this defect because it would be too costly and could indicate an admitted problem with the original design. The results of this decision were, to put it mildly, calamitous.

One commentator described the results of this act of this corporate malfeasance, if not outright criminality, as follows:

At least 110,000 women using the device became pregnant, and more than half of them miscarried; 15 in the United States are known to have had fatal septic abortions and 18 died of pelvic inflammatory disease. Some of the women left the shield in place during pregnancy

and gave birth to deformed children, and thousands of others suffered pelvic infections that left them infertile.

As the problems with the Dalkon Shield became known, thousands of suits were filed against A.H. Robbins including several individual cases where the plaintiff was awarded substantial damages. For example in Palmer v. A.H. Robbins the plaintiff was awarded $600,000 in compensatory damages and $6,200,000 in punitive damages. In order to avoid this deluge of lawsuits, A.H. Robbins declared Chapter 11 bankruptcy in 1985. Eventually, a compensatory trust fund was established which was woefully insufficient to compensate the victims of its reprehensive conduct. None of A.H. Robbins executives were held personally liable and nobody went to jail.

The peanut corporation of america (pca) and the salmonella outbreak

The PCA case is worth mention, not because of the number of casualties—9 deaths and 714 confirmed illnesses, most of those children --but because it is one of the few cases where the corporate executives responsible were subject to criminal liability. The PCA scandal stems from a salmonella outbreak that took place in late 2008 and early 2009.

The PCA was the manufacturer of peanut butter and related products. Its customers included such companies as Kellogg, Sara Lee and Little Debbie. It also sold items to the federal government for use by poor school children, disaster victims and military troops. In late 2008, as it became clear that there was a salmonella outbreak, the Center for Disease Control and Prevention (CDC) conducted an investigation which led it back to PCA. Eventually, the investigation resulted in the largest food recall in the United States involving at least 361 companies and 3,913 different products manufactured using PCA ingredients.

The outbreak led to several state investigations and one by the FBI. The FBI investigation discovered that PCA executives had sent out peanut putter products knowing they were contaminated with salmonella. The following executives of PCA were indicted in 2013: Stewart Parnell, the owner and president of PCA, his brother Michael Parnell, a food broker for the company and Mary Wilkerson, who held several positions for PCA including receptionist, office manager and quality control manager. In 2014, all were convicted. Stewart Parnell was sentenced to 28 years, Michael Parnell to 10 years and Mary Wilkerson to 5 years.

One might think that this level of punishment for corporate executives who valued profit over the lives, health and safety of the public would be a disincentive to similar corporate behavior in the future. However, since the PCA is such an anomaly and maximizing profit or minimizing loss appears to remain the Holy Grail of the corporate world, that outcome is probably more a hope than a probability.

Conclusion

The cases discussed above are but a small sample of situations where corporate executives chose profit over the health, safety and lives of the public. This article has examined the Sackler family squiring away $10 billion dollars while they promoted higher sales of OxyContin during the opioid crisis, Ford selling cars they knew were prone to exploding in rear end collusions, Bayer selling a blood clotting agent that they knew could cause AIDS in hemophiliacs; A.H. Robbins selling an IUD which they knew not only had a higher chance of pregnancy than other contraceptive methods but also could be harmful or even deadly to women who used it and the Peanut Corporation of American (PCA) that knowingly sold peanut butter products contaminated with salmonella. In each case, the corporate executives and/or owners of these companies simply ignored the potential human devastation that was likely to result from their decisions in order to make an extra buck. The public be damned. Perhaps more concerning is the fact that with the exception of PCA nobody—no corporate executive or company owner—was held accountable.

The question for all of us is: Where have we gone wrong?" Do more corporate executives than we would like to believe really think as Gordon Gekko said in the movie Wall Street that "Greed is good"? Is it part of human nature that human beings, left to their own devices, will seek out money and power without regard to the consequences? If there are truths in these questions, we as a society must seek out ways to solve those issues. In the meantime, we can hope that when corporate officers make these types of shameful decisions they will more often face real accountability discouraging other corporate executives from engaging in similar conduct.

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