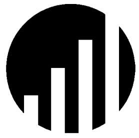

IRRC

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SOCIAL ISSUES
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Cintas Sues Walden for Defamation

In an unprecedented move this month, Cintas, the largest uniform rental provider and industrial launderer in the United States, filed a defamation lawsuit against its shareholder Boston Trust & Investment Management, owner of social investment firm Walden Asset Management, and Walden employee Tim Smith. The allegations: that Smith made false and disparaging statements in a speech at Cintas's annual meeting last year.

The suit, filed with the U.S. District Court for the Southern District of Ohio, seeks at least $75,000 plus related court costs in compensation for "substantial injury" to Cintas's "business, goodwill and reputation" and for expenses related to investigating and refuting Smith's claims, in addition to punitive damages.

A number of shareholder activists are calling on Cintas to drop the suit, arguing that it will only serve to stifle dialogue between shareholders and companies at a time when distrust is at an all time high.

The Annual Meeting

In its complaint, Cintas says that Smith had "actual knowledge" that the statements he was making "were false," or at the very least that he made them "with reckless disregard to the[ir] false and defamatory nature." At Cintas's annual meeting, Smith accused Cintas of contracting with a factory in Haiti that was a "poster child for sweatshops" and that purportedly violated Haitian labor laws and Cintas's own code of conduct.

By tapping the Journal of Commerce's Port Import Export Reporting Service, IRRC found that Cintas imported men's shirts and pants from Haitian American Textile, at the same address Unite reported for Haitian American Apparel.

Cintas told IRRC that Smith "admitted all of his information came from the Union of Needletrades, Industrial and Textile Employees" and that Unite is an extremely biased source, since it has been engaged in an aggressive campaign in a bid to win the rights to represent Cintas's workers. "Smith also acknowledged that he never bothered to check the accuracy of Unite's accusations," Cintas added, "even though Walden's policy is to independently verify such reports before making public accusations." Representatives from Walden declined to comment on the case, but Unite told IRRC that it stands behind its findings about Cintas's supplier in Haiti and Smith's comments at the annual meeting.

Smith attended Cintas's annual meeting to speak about a resolution filed by Walden, the lead proponent, and Domini Social Investments. The proposal asked Cintas to issue a report describing and evaluating the labor rights provisions in its code of conduct, monitoring systems and compliance mechanisms for its factories, vendors and buying agents. Before Cintas's shareholders for the first time, the resolution received 8.4 percent support, enough for resubmission.

The AFL-CIO and its affiliates also filed three governance proposals at Cintas last year—two on board inde-

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Published by IRRC's Social Issues Service

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pendence and one on expensing stock options—all of which received more than 30 percent support. The AFL-CIO, which claims Unite as an affiliate, also supported Walden's proposal and designated it a key vote. The four shareholder proposals were the first to come to votes at the company since 1997.

Accusations

In November last year, Unite released a report that, among other things, accused Cintas of contracting with a sweatshop, Haitian American Apparel. The report contains a laundry list of allegations about forced overtime and wage violations. Among them, Unite claims that workers attested to being routinely locked on the factory's compound under watch by armed guards and forced to work 10 hours per day or more without overtime compensation, in violation of Cintas's code and Haiti's labor laws. The union also claims that one worker said she was not permitted to leave work until she finished her daily quota of sewing 1,080 zippers onto pairs of pants, and that she was paid less than $2 per day for her work, less than the legal minimum in Haiti. The same woman told Unite that her pay was typical for the factory's 1,500 workers. Workers also told Unite that the factory's supervisors engaged in loan sharking by charging employees annual interest rates of more than 25 percent for short-term loans.

According to Unite, workers also complained:

- that poor ventilation at the facility and unbearably hot air laden with dust and cloth particles from the sewing and cutting operations made it extremely difficult for them to breathe;
- that despite these conditions, factory managers refused to make potable water available for free;
- that the factory's managers neglected to place needle guards on sewing machines, which could have prevented the many incidents of workers' fingers being punctured; and
- that the factory's supervisors and managers told workers who complained about the conditions to go back to work or to leave and never return.

Unite says Cintas initially denied doing business with the factory altogether, until Unite showed the company labels from the factory with Cintas's name and U.S. Customs declarations naming Cintas as the importer of record from the facility.

Unite passed along its findings to Smith in advance of Cintas's annual meeting and Unite's publication date. The report that Unite released in November highlights Smith's comments in the section on Haitian American Apparel. Unite submitted the report formally as well to the Fair Labor Association, the Workers Rights Consortium and 11 of Cintas's university customers, requesting that the organizations conduct an independent investigation of Cintas's labor practices.

Wade Gates, spokesperson for Cintas, told IRRC that Cintas has never denied having a supplier in Haiti, but that the name of its supplier is not Haitian American Apparel. Gates declined to name the supplier, though, stating it was against Cintas's policies to do so.

However, by tapping the Journal of Commerce's Port Import Export Reporting Service, which inputs more than 25,000 bills of lading everyday, IRRC found that Cintas imported men's shirts and pants from Haitian American Textile, at the same address Unite reported for Haitian American Apparel, on several occasions. For May 2003, imports from Haitian American to Cintas's main distribution facility in Mason, Ohio, were valued at $156,809.

Cintas's Case

Gates told IRRC that the one Haitian supplier Cintas uses had been audited at least once last year before its October 2003 annual meeting, as part of Cintas's annual audit cycle for its suppliers, by a third-party auditor with years of experience in environmental and labor monitoring. He said that the auditors found the factory to be in compliance with all local labor laws, including those covering wages, hours and safety, in addition to all of the standards in Cintas's code. He added that the audit showed the factory provided potable water free of charge and employed proper safeguards for equipment, and that there were no indications that supervisors were engaged in providing high interest loans to employees. Gates declined to tell IRRC the name of its auditor, but added that Cintas personnel were in the factory the day Smith made his remarks, and they also verified that the factory was operating in compliance with Cintas's code and local laws.

Cintas declined to comment further to IRRC on the motives behind its lawsuit or on its next moves, but its court filing provides some additional information on its case. Cintas claims in its filing that Smith stated in front of the 150 –160 shareholders in attendance at the annual meeting that supervisors at a "major supplier to Cintas," Haitian American Apparel,

- forced employees to work overtime,
- terminated employees "without due process,"
- exposed employees to "unacceptable health and safety conditions," and
- engaged in "loan sharking."

Cintas says that Smith made the accusations even though he knew the sole source for them was Unite, which was "engaged in an aggressive and bitter corporate campaign to coerce Cintas's management to accept a unionized workforce." Cintas further asserts that Smith recounted Unite's allegations without verifying them—in violation of Walden's own policy not to rely on only one source—and did so "with actual knowledge that the statements were false, or at the very least, with reckless disregard to the false and defamatory nature." Cintas is seeking at least $75,000 plus related court

costs in compensation for "substantial injury" to its "business, goodwill and reputation" and for expenses related to investigating and refuting Smith's claims. It is also seeking punitive damages.

Cintas maintains it had an "excellent reputation among the community and public sector" when Smith made his speech, noting that Fortune magazine has rated Cintas one of "America's Most Admired Companies" for the past three years. It also touts its code of conduct program for suppliers, which bars its vendors and suppliers from using child, forced or prison labor, using mental or physical coercion or discriminating "on the basis of gender, race or cultural differences." In addition, the code mandates that suppliers abide by applicable wage, hour, health and safety laws and guarantees workers the right to organize. The code also requires suppliers to submit to monitoring by Cintas or its agents without notice and to remedy problems immediately. Suppliers face termination if they breach Cintas's policies.

Subtext

The International Brotherhood of Teamsters and Unite formed a partnership last year to organize workers at Cintas. Under the partnership, drivers who deliver Cintas's products organize with the Teamsters and support the organizing efforts of production workers in Cintas's laundries, who are organizing with Unite. The unions say Cintas has a record of abusing workers and breaking laws, from failure to pay minimum wages and overtime pay to discrimination.

The unions point to more than 40 lawsuits that have been filed against Cintas for racial, sexual, age and disability discrimination and to the more than 100 violations of U.S. labor laws Cintas is under investigation for by the National Labor Relations Board. Drivers working for Cintas in the United States filed a class action lawsuit alleging Cintas intentionally refused to pay them up to $100 million dollars in overtime pay. In November 2003, Unite, the International Brotherhood of Teamsters, and eight current and former Cintas employees filed complaints with the Equal Employment Opportunity Commission offices around the country and an accompanying class-action lawsuit against Cintas, alleging widespread discrimination against women and members of racial minorities.

In a series of statements released last year, Cintas has sought to defend its record. It says that its dispute with Unite stems from its concern that Unite is seeking to force employees to recognize the union under terms other than a democratic, secret ballot election. Cintas says that it respects workers' rights to unionize, but believes that the unions are doing everyone a disservice by creating "an environment of antagonism and distrust" as proven by the "malicious tone of materials that the unions have been distributing recently."

Cintas denies that it has fired or harassed employees for supporting union representation. It says that "common sense dictates" that "other factors [were] involved" in the dismissal of employees the unions are saying were unjustly fired. In some cases, it says, individuals resigned for "other reasons" or were terminated for their "on-the-job performance, unlawful activity or inconsistent attendance." Cintas says it refuses to offer explanations for each case out of respect for privacy, and that in many cases it cannot by law "divulge details about individual personnel files, despite allegations by disgruntled former employees or union salesmen."

It also denies that it pays low wages or operates sweatshops. It says its "overall safety record is comparable to industry averages." It also says, "it only makes common sense that Cintas must pay wages and salaries that are competitive in each marketplace; otherwise the company would not be able to attract and keep talented personnel." In addition to competitive wages, it notes that it has a comprehensive benefits package that includes health, dental, vision, disability and life insurance, paid sick leave, as well as "profit sharing, matching 401(k) contribution and employee stock ownership." In this way, it argues that its employees have profited as the company has over the past decade. Cintas says the majority of its workers do not want a union and notes that "employees at 49 different facilities over the past 20 years have voted to discontinue their union relationships."

Cintas admits that it has been cited in the past for violations of federal occupational safety and discrimination laws, but says it has fixed any problems that existed. The latest round of claims, Cintas asserts, is simply a case of the unions—in a move to damage Cintas's reputation—abusing the system intended for workers to file legitimate complaints.

In its last press statement from January on its ongoing dispute with Unite, Cintas says that the "more than 100 claims" before the National Labor Relations Board (NLRB) that Unite frequently cites in its press releases are "highly exaggerated" and "misleading." It says that more than two-thirds of the 100 charges were either dismissed by the NLRB or withdrawn by the union before the NLRB dismissed them. Most of the others, it says, are in the final stages of being settled with the NLRB without any determination of wrongdoing by Cintas or associated fines. The NLRB, Cintas notes, has not yet ruled on the remaining seven charges, which involve only four of its 300 locations. Those seven cases will go to evidentiary hearings before the NLRB later this year.

Reactions

Smith and his employer, Walden, declined to comment for this article, but Ahmer Qadeer of Unite told IRRC that Cintas's lawsuit is "totally frivolous" and that its charge that Smith lied is "fraudulent" in itself. Qadeer says that

all of the information presented by Smith is true, and that Unite has the evidence, including worker testimonials and customs documents, to back it up. Qadeer suspects that Cintas is suing Smith and Boston Trust in an indirect attack on Unite and its unionization drive.

Still, shareholder proponents are left speculating about Cintas's next move and whether Cintas's lawsuit will prompt other companies to take similar actions.

David Schilling, program director for the Interfaith Center on Corporate Responsibility's supplier compliance campaign, says his organization is concerned that the lawsuit will have a "chilling effect" on what shareholder proponents say at annual meetings. "The Interfaith Center and its affiliates have filed thousands of resolutions over the years on supplier compliance and other issues and have taken all reasonable steps to ensure that what our members say at annual meetings is a true rendering of the facts as best we know them, but people make mistakes." Schilling is afraid that the threat of lawsuits from companies could quash legitimate debate between companies and shareholders on these issues. As a result, he says that the Interfaith Center is seeking legal advice on the issue, and he expects many other shareholder proponents are doing the same.

Schilling says that instead of "using the legal system to attack a responsible shareholder," Cintas should be "spending its energies vetting its supply chain and rebuilding trust lost over the past several years between companies and their shareholders over accounting scandals and well documented labor abuses in supply chains." Cintas's actions he says, "force a wedge between shareholders and companies instead of building a bridge." Schilling adds that Cintas does not have a reputation for being a leader in developing strong codes and compliance programs for its suppliers, so investigating the claims made by Unite and Smith, reporting back to shareholders on its findings and working with labor and human rights groups on improving its compliance system would be much better moves for the uniform maker. A lawsuit, he says, is certainly not going to make Cintas any more popular with shareholders, one of its main stakeholders.

Patrick Doherty with New York City's Comptroller's Office, another major filer of proposals on global labor standards, believes it is premature for shareholders to consider restricting what they say as proponents at annual meetings. "While a case like this may have not come up before, it has not set a precedent yet." He believes Cintas's case is "ludicrous and self-defeating," and that it ultimately will only "draw attention to the issues Smith was trying to raise at the annual meeting about Cintas's supply chain." He believes that Cintas's intent was to intimidate Walden and other groups and limit free speech "by taking on one of the most respected people in socially responsible investing." Doherty says that shareholder activists need to press on and stick together, just as they when corporations attempted to challenge the future of employment-related resolutions during the late 1990s. If the allegations Smith made are false, Doherty says, Cintas should simply have a third party vet and discredit them, report back to shareholders and move on.

In a press release this month, Citizens Advisers, another active shareholder proponent, also weighed in on Cintas's lawsuit. It warned that a defamation suit recently filed against a leading shareholder advocate might intimidate shareholders generally from exercising their First Amendment rights. "This kind of lawsuit risks silencing the voices of shareholder activists across the country who courageously stand up to company management at annual shareholder meetings," said Citizens Advisers director of corporate responsibility Joanne Dowdell. "The concern is that companies under scrutiny may use defamation suits as a tactic to bully shareholders into silence," she added. Citizens is urging Cintas to drop its defamation suit.

Legal Analysis

Randall Bezanson, professor of law at the University of Iowa and an expert in the fields of law related to libel and free speech, told IRRC he was somewhat surprised that Cintas filed a lawsuit that leaves it with a heavier burden of proof than it needed to undertake. He says Cintas has accused Boston Trust and Smith of malice, by which Cintas must prove that Smith knew that he was lying at Cintas's annual meeting or that he had "entertained serious doubts" about the veracity of his statements and still decided to proceed recklessly without taking reasonable steps to verify his claims. To do so, he says that Cintas must have proof of Smith's state of mind when he made his speech, something that will be very difficult to do. Alternatively, he says, Cintas could have filed a suit alleging that Smith and Boston Trust were only "negligent," and therefore had made false statements because they had not tried to verify them in the first place.

Bezanson says that Cintas might have chosen its present course to punctuate the seriousness of its charges, or in a move to avoid arguments from the defendants that the case should be dismissed on constitutional grounds. He explains that negligence is a First Amendment privilege that applies to libels by private persons, not public figures, which Smith and Boston Trust arguably are. If challenged, the two sides would have had to fight about the constitutional questions underlying the level of privilege, including taking briefs, perhaps hearings, and of course time and money. In the end, he says, Cintas might have lost, requiring a new filing or an amendment requiring proof of actual malice. Even if Cintas won, much time and money would have been expended, he explains.

In filing for malice, Bezanson says, Cintas also is levying much more serious charges against Smith and Boston Trust that carry with them the potential for higher awards. If Cintas proves its case, he says, the jury has a lot of leeway in awarding damages to Cintas. Juries in these cases are also able to award punitive damages to deter the defendants and others parties from committing similar acts, which he says can run very high.

Still, Bezanson speculates that Cintas did not file the lawsuit with the aim of reaping monetary awards. The opening request for damages of $75,000 is very low, he notes, and an unusual strategy for a plaintiff's attorney purely seeking money, who would usually set a high amount and bargain down. He suspects that Cintas is looking for Smith to say he was wrong, which would help the company's reputation and leave Smith with a bit of egg on his face. How quickly the suit was filed, he notes, is another indicator that a public apology might be what Cintas is really after. In many states, he explains, monetary awards for libel suits are severely restricted if defendants retract their statements within six months after they are made. Filing the lawsuit quickly, he says, gets Smith's and Boston Trust's attention and leaves the door open for the defendants to retract their statements publicly to limit liability.

As far as advice for other shareholder proponents, Bezanson says there is no real reason for alarm. To avoid potential liabilities, he says that proponents speaking at annual meetings should first and foremost be sure not to state as fact something they know or suspect to be untrue, check sources and note them.

—Peter DeSimone

SEC Staff Makes First 'No-Action' Decisions

'No-action' letters responding to companies' requests to omit 2004 shareholder resolutions are beginning to trickle out from the Securities and Exchange Commission staff. The staff acts as a referee in deciding whether the terms of the SEC's shareholder proposal rule (Rule 14a-8) allow companies to exclude proposals from their proxy statements. Reasons for exclusion vary from the straightforward (if a resolution was filed late, for example) to more subjective matters (such as whether a proposal deals with mundane "ordinary business" issues).

IRRC receives information on no-action decisions and arguments, pro and con, from the SEC's public reference room (though some documents are very slow to turn up) and from Paul Neuhauser, the attorney for a number of social issues proponents. So far, although it's a bit early to pinpoint trends, the SEC staff has allowed very few omissions for substantive reasons, although a handful of important decisions have gone against the proponents.

Greenhouse Proposals

Most notably, the SEC staff agreed with an insurance company—**Chubb**—that Walden Asset Management's resolution asking for a report on its strategies to address the impacts of climate change was excludable on ordinary business grounds. This decision will almost certainly be repeated for American International Group, which has also challenged with similar arguments.

Activists have experimented with various types of resolutions involving global warming since they began raising the issue in 1994. In 2003, the proponents ran into trouble with a new resolution to several companies that asked for a report on risks associated with greenhouse gas emissions; the SEC staff agreed with Cinergy and Xcel Energy that the proposal was excludable as ordinary business because it involved "the evaluation of risks and benefits." For 2004, the proponents abandoned that approach, but this year's recipients of greenhouse resolutions are nevertheless trying to make the case that the Cinergy no-action letter provides a precedent for omitting their proposals.

Chubb and American International Group received a proposal from Walden Asset Management asking that they provide a comprehensive assessment of their strategies to address the impacts of climate change. Requesting no-action letters from the SEC, they argued that in the case of insurance companies, any evaluation of the effects of global warming on their businesses by its nature would get into risk assessment. As AIG wrote, "Underwriting involves estimating risk and loss exposures—including, in many cases, environmental risks—and setting appropriate premiums for the assumption of those risks....Thus the proposal relates directly to the company's policies and practices for product offerings, risk management, pricing of products, assessment of exposures and probability of losses—matters quintessential to the operation of an insurance business." AIG and Chubb also pointed to a precedent in addition to the Cinergy letter, in 1998, when insurance companies were allowed to omit as ordinary business proposals asking for a report on their anticipated liabilities from global warming.

Arguing the case for the proponents, Paul Neuhauser contended that the 1998 decision was not a precedent because that proposal involved what

the SEC staff had termed "the company's evaluation of risk for the purposes of setting insurance premiums" whereas the 2004 proposal was "asking for a review of the company's long-term strategy." Neuhauser added, "In short, the risks related to global warming are unlike ordinary risk underwriting that would normally be engaged in by an insurer and would constitute ordinary business...but rather are long term strategic risks." The SEC staff, though, bought the companies' argument that the proposal constituted ordinary business, concluding that it involved "evaluation of risks and benefits."

The proponents have fared much better, though, on a new resolution to energy companies asking that a committee of independent directors assess how the company is responding to rising regulatory, competitive and public pressure to significantly reduce carbon dioxide and other emissions. That proposal has been challenged by Anadarko Petroleum, Apache, ExxonMobil, Reliant, Unocal, Valero Energy and Xcel Energy, all of whom are maintaining that the resolution raises ordinary business issues. Several are saying in addition that it is both false and misleading or moot.

In a typical challenge, Xcel writes that in rephrasing the 2003 resolution for 2004 the proponents have merely made "cosmetic changes in one paragraph" that "do not change the real focus of the proposal, which is the effect, including financial risks and competitive pressures, on the company from pressures to reduce emissions." Thus, the company maintains, the proponents are still getting into an ordinary business issue.

Neuhauser has responded on behalf of the proponents that, "Unlike last year's proposal to Xcel requesting an evaluation of financial risks, the proponent has simply asked the company to report on how it is responding to an important social policy issue, namely societal pressures to reduce its greenhouse gas emissions." If the staff were to buy Xcel's argument, Neuhauser contended, it would be effectively repealing the commission's May 21, 1998, pronouncement that a proposal "focusing on sufficiently significant social policy issues...would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote."

So far, the SEC staff have appeared relatively unsympathetic to the companies' challenges. They have now told **Apache**, **Anardarko** and **Valero** that they may not exclude the proposals, although Anardarko, which said the proposal contained materially false and misleading statements, has been told it may exclude the offending phrases, though not the entire proposal.

Also still to come is a decision on a very different greenhouse proposal to Ford from a long-time conservative shareholder activist, Carl Olson, asking for an annual "Scientific Report on Global Warming/Cooling" that would include such information as the temperatures that measure global warming. Olson appears to be a global warming skeptic; the first whereas clause says, "Whereas discussions of global warming/cooling are often filled with vagaries, scare stories and international conflicts." Ford says it agrees with SEC staff decisions in earlier years that shareholder resolutions to manufacturing companies on plans for addressing global warming present a significant social policy issue that would not normally be excludable. But, it argues, the kinds of data the Olson proposal asks for are "a governmental affairs/scientific issue that is strictly within the ordinary business of the company." Ford also contends that the proposal is "replete with ambiguities" that make it both vague and misleading and impossible to effectuate.

Political Contributions

One of the distinctive elements of the 2004 proxy season is a flood of new proposals on political contributions. Many of them are identical, and emanate from labor unions; the Sierra Club has proposed the same resolution at several companies. IRRC so far has found letters from four companies challenging that proposal.

First Energy is arguing that the proposal is false and misleading (section (i)(3) of the shareholder proposal rule), citing assertions in the whereas clauses such as "Company executives and lobbyists exercise unbridled discretion over the use of corporate resources for political purposes" or "Company officials may, in fact, be funding groups and candidates whose agendas are antithetical to the interests of it, its shareholders and its stakeholders." Abbott and SBC Communications also challenged the political spending proposals on i-3 grounds, although IRRC has not yet seen their correspondence in the SEC public reference room.

Safeway is contending that the proposal is moot (section (i)(10)) because the information on its political action committee contributions is publicly available and it intends to post "a brief description" of its contributions policy on its website.

ExxonMobil, too, is arguing that the resolution is moot, saying that it already makes available a "wealth of information" on its website at www.exxonmobil.com/CAT. Moreover—in what it appears to be a considerable stretch—it maintains that the resolution substantially duplicates Evelyn Davis's standard, long-running proposal asking companies to affirm their political nonpartisanship, which it plans to include in its proxy materials. ExxonMobil also characterizes the proposal as ordinary business, on grounds that it fundamentally relates to energy policy—"a matter of direct relevance to ExxonMobil's day to day operations."

Finally, American International Group, which has submitted vigorous arguments against all the proposals it received this year, is contending that the labor proposal can be omitted as ordinary business for a different reason. The company cites the resolved

clause requests for the business rationale for contributions and for identification of company employees who participated in the decision-making, and it argues that "even shareholder proposals raising significant social policy issues may be excluded if the proposal seeks to micro-manage the issuer." Chubb, Citigroup and Wyeth have also challenged the proposals on ordinary business grounds, although their correspondence has yet to appear in the SEC's public reference room. AIG also argues, like FirstEnergy, that assertions in the supporting statement are false and misleading.

In addition to those challengers, Tribune Co. is asking for a no-action letter for a different political contributions proposal, from Domini Social Investments. Domini's proposal requests somewhat less detailed information in the resolved clause. In requesting a no-action letter, Tribune is citing the shareholder proposal rule's rarely invoked relevance clause (i)(5), which allows companies to omit resolutions that account for less than 5 percent of earnings and are "not otherwise significantly related" to their business. Tribune says the proposal "has only abstract application to the company because there really is nothing to include in a report to shareholders" since it has discontinued discretionary political contributions and soft money contributions are no longer legal.

So far, the SEC staff has signaled—in response to challenges from Chubb, Citigroup and Wyeth—that the new resolutions may not be omitted on ordinary business grounds. It was slightly more sympathetic to the arguments by Abbott Laboratories and SBC Communications that the proposals contained statements that were materially false and misleading, but it said the companies would have to include the resolutions in their proxy statements if the proponents made the required revisions in phrasing. Surprisingly, though, it accepted **Comcast**'s and **Bristol Myers**'s argument that they can omit the labor proposal because it is "substantially the same "as Evelyn Davis's previously submitted standard proposal on disclosing political contributions in newspapers.

Other Issue Areas

The SEC staff has also handed down responses on challenges to proposals dealing with animal testing, charitable giving, drug pricing, and the distribution of stock options by race and sex.

The SEC staff have delivered nuanced messages with regard to the new batch of proposals from members and supporters of People for the Ethical Treatment of Animals asking companies to avoid animal testing by committing themselves to validated alternatives. **PPG Industries** has been allowed to omit the resolution as moot, and **Amgen** was also allowed to omit the proposal, but on technical grounds. Neither **Johnson & Johnson** nor **Wyeth**, however, fared as well in their challenges to the identical resolution. The SEC staff did not accept J&J's argument that the resolution was contrary to federal, state or local law or beyond the company's power to implement, nor Wyeth's argument that the resolution involved ordinary business. The SEC staff did say that both companies could omit certain phrases in the resolution that each had argued were materially false and misleading when they print their proxy statements.

Much of the text of a resolution asking **Johnson & Johnson** to stop making charitable contributions has passed muster at the SEC—despite the fact that the supporting statement focuses on concern about gifts to charities like Planned Parenthood that support abortion. Anti-abortion activists have had scant success in pursuing their issue through the shareholder resolution route in earlier years, and J&J, in its unsuccessful argument, pointed to earlier precedents in which companies were allowed to omit facially neutral proposals when it appeared from the supporting statement that the proponent's agenda was anti-abortion. The SEC staff's no-action letter didn't elaborate on what it saw as the difference between this year's proposal and earlier omissions. Similarly, the SEC staff informed **Textron** and **Wyeth** that they should include in their proxy statements similar proposals from Raymond Ruddy. Both had sought to exclude the proposal on technical grounds.

Although **Johnson & Johnson** struck out in its attempts to exclude the proposals on animal testing and charitable giving, it won a victory in another area. It has been told that the new resolution asking it to report on how it will respond to "regulatory, legislative and public pressure to increase access to and affordability of prescription drugs" can be omitted as ordinary business.

Finally, two more companies to lose arguments at the SEC were **Coca-Cola and Verizon**, which had each tried to omit Responsible Wealth's new resolution asking for a report on distribution of stock options by race and sex. Coca-Cola failed to persuade the SEC the proposal was moot or Verizon that it involved ordinary business decisions.

Withdrawals

In addition to the omissions listed at the beginning of the article, the list of pending proposals has been shortened somewhat by negotiated withdrawal agreements. New York City has withdrawn its proposal asking **ConocoPhillips** to review its operations in states that allegedly sponsor terrorism, with particular reference to "potential financial and 'reputational' risks," and report to shareholders. The withdrawal came when the company promised to provide a report on its operations in Syria. The city has also withdrawn it proposal asking **ExxonMobil** to urge its franchisees to implement the MacBride principles, after the company wrote to the fran-

(continued on p. 18)

Political Donations Emerge as Shareholder Focus

Concern over corporation' political spending is emerging as one of the major themes of the 2004 social issues proxy season. As the 2004 U.S. presidential race moves into high gear, promising to be the most expensive ever, a broad array of shareholder proponents have new proposals pending this year at 33 firms asking them to report on their contributions to federal, state and local political candidates and rationales for these donations. In addition, Evelyn Y. Davis is once again filing proposals requesting greater corporate disclosure on political contributions and the ways they solicit contributions from employees for corporate political action committees (PACs).

The 40 pending resolutions on political spending represent a dramatic spike in shareholder activity concerning corporate political contributions, up from the four filed in 2003 and the six in 2002. In fact, there hasn't been this much activity on political issues since the mid 1970s when Davis was filing nearly 30 resolutions on the topic a year. Since then, the last such group to take on the issue with any significance was Common Cause, a citizens' advocacy organization, which filed 15 resolutions in 1989 and 1990, but none after that. The most recent spike in activity occurred in 1996 when shareholders voted on 18 resolutions, all of which Davis filed.

The Shareholder Campaign

The Service Employees International Union and Central Laborer's Pension Fund have spearheaded the new campaign by filing resolutions to a dozen companies each requesting that they report to shareholders on their policies for political contributions to federal, state and local political candidates, political parties, as well as other political entities known as 527 organizations. The report also seeks a breakdown of the contributions made, a business rationale for each contribution and the names of the "person or persons in the company who participated in making the decisions."

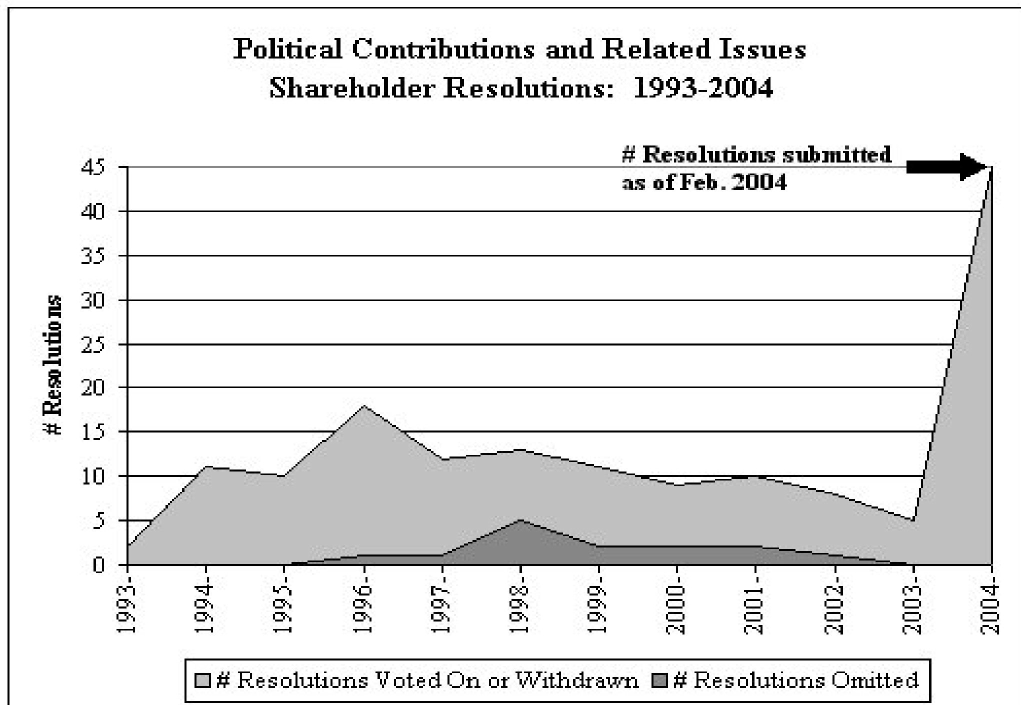
SEIU maintains that "without full transparency, we believe company executives may be able to inappropriately direct corporate resources for political purposes and make decisions unilaterally without a stated business rationale for such donations." Steve Abrecht, director of the SEIU Benefit Fund, told IRRC that his organization believes it behooves corporate boards to set clear rules governing their companies' political contributions to ensure that these contributions are made "for clear business purposes" and not at the "whim" of the corporate personnel approving the checks. He noted that many new regulations are coming into effect governing political contributions—including disclosure requirements mandated by the IRS for Section 527 groups—and that shareholders need a "clear and complete picture" of what the company is doing. Abrecht said the SEIU focused in particular, although not exclusively, on financial companies, because the financial industry is reputed to be one of the largest donors of campaign money. Abrecht also acknowledged that the SEIU itself is a major political donor, but noted that combined union contributions were less than a tenth of the total contributions given by business interests. (The accompanying table on p. 12 details recent political contributions and lobbying expenses of the companies receiving resolutions on this issue and of the proponents filing them.) SEIU does not provide a report to its members on the breakdown of its own political donations.

John Richardson, who is co-director of the Center for Political Accountability and worked with the union funds to file the resolution, told IRRC that "the purpose of these resolutions is to require companies to lift the veil of secrecy and disclose and explain the business purpose of their political donations….This is not simply a question about who gave how much but which candidates and organizations ultimately received these corporate contributions….We believe this change is essential if shareholders are to be better informed about how companies are using their money politically."

The SEIU's proposal remains pending at **American Express, American International Group, Chubb, Citigroup, General Electric, JP Morgan, PepsiCo, Pitney Bowes, Wachovia** and **Wyeth**. The staff of the Securities and Exchange Commission allowed Comcast and Wal-Mart to omit the proposals, the former because it had already received a closely related resolution from Davis, and Wal-Mart because SEIU had not documented it owned sufficient stock to be eligible to file.

The Central Laborers' Pension Fund has the same resolution pending at **Altria**, **AmSouth**, **BellSouth**, **First Energy**, **Harrah's Entertainment**, **Hartford Financial Services**, **Lockheed Martin**, **Morgan Stanley**, **Textron**, **Time Warner**, **Union Pacific** and **Waste Management**, and has withdrawn the proposal at Bank One. The Sierra Club has co-filed the SEIU proposal at GE, and filed the same proposal as well at **ExxonMobil**. The Teamsters have submitted identical resolutions to **IBM**, **SBC Communications**, **Verizon** and **Wells Fargo**, and the United Brotherhood of Carpenters and Joiners is filing at **Safeway**.

Domini Social Investments has proposed a somewhat different resolution to **Tribune**. The resolved clause asks that the board "report annually to shareholders in a separate report on corporate resources devoted to supporting political entities or candidates



on both state and federal levels. The report should be prepared at reasonable expense and omit proprietary information. We suggest that the requested comprehensive report set forth and quantify, specifically and not in aggregate, company resources devoted to supporting political entities and candidates, to supporting third-party organizations that engage in political activity including section 527 organizations, and related expenditures of money and other resources." Whereas clauses in the Domini proposal note that the media industry has spent "significant resources" to support political candidates and entities, saying that the 25 largest companies gave $26.7 million in 1999-2002.

The Nathan Cummings Foundation has filed a resolution with the same resolved clause as Domini's, but the recipients are drug companies—**Merck** and **Pfizer**. Church groups filed the same resolution to **Abbott Laboratories**, where it remains pending, and at Bristol-Myers Squibb, where the SEC staff allowed the company to omit it as largely duplicative of the proposal already filed there by Davis. The whereas clauses focus on drug company political contributions, noting that the industry trade association gave $57.9 million in political contributions between Jan. 1, 1991, and Dec. 31, 2002.

The other political resolutions are coming from individual shareholder Evelyn Y. Davis, who has rotated standard proposals among her stockholdings for some 40 years, substituting one when another fails to get enough support for resubmission. For 2004, Davis's proposal asking for disclosure of political contributions in leading newspapers is going to **Bank of New York, Bristol-Myers Squibb, Comcast, PepsiCo** and **Riggs National Bank**. Her proposal asking companies to affirm their political nonpartisanship is pending again at **AMR** and **Exxon Mobil**. (In addition, her resolution asking for disclosure of the names of employees who recently worked for the federal government is up at DuPont and Lockheed Martin.)

The SEC has already signaled—in response to challenges from Chubb, Citigroup and Wyeth—that the new resolutions may not be omitted on ordinary business grounds. It was slightly more sympathetic to the arguments by Abbott and SBC Communications that the proposals contained statements that were materially false and misleading, but it said the companies would have to include the resolutions in their proxy statements if the proponents made the required revisions in phrasing. IRRC has yet to see the SEC staff's responses to arguments by ExxonMobil and Safeway that they have already substantially implemented the proposals' requests, or to Tribune, which has challenged the resolution on grounds that it "relates to operations that account for less than 5 percent of the company's total assets."

Campaign Finance Reform

The issue of special-interest involvement in federal elections has been prominent in recent years, serving as a centerpiece of Sen. John McCain's (R-Ariz.) unsuccessful race for the Republican Presidential nomination in 2000 and generating drama in the repeated failures, and eventual success in 2002, of McCain's campaign finance reform bill (cosponsored by Democratic Sen. Russ Feingold of Wisconsin). The McCain-Feingold bill, titled the Bipartisan Campaign Reform Act (BCRA), was meant to curb the role of corporations, labor unions and special interest groups in the federal political process. Opponents of the bill immediately challenged it in federal court, claiming that it infringed on freedom of speech. The Supreme Court upheld the law in a ruling last December, but indicated the debate was far from over. According to the Associated Press, Justices Stevens and O'Connor wrote in a joint opinion that they were "under no illusion that (the law) will be the last

congressional statement on the matter. Money, like water, will always find an outlet. What problems will arise, and how Congress will respond, are concerns for another day."

The fatalism Stevens and O'Connor expressed is hardly surprising. Over the last 10 years, money raised by the Democratic and Republican parties has nearly doubled. The Democratic Party raised $261 million in 1991 and 1992, and the Republican Party raised $368 million. In 2001 and 2002, the Democratic Party raised $463 million compared to $692 million raised by the Republican Party. These figures don't include money raised by 527 organizations, named after the tax code that created them, political nonprofits with significant ties to political parties. According to the Silent Partners report by the Center for Public Integrity, "Since a law mandating disclosure passed in 2000, such groups accounted for just under $450 million in spending. Committees run by Democratic parties and candidates, along with their… allies, have spent nearly two-thirds of that total." According to the Center for Responsive Politics, during the 2002 election cycle, business interests gave over a billion dollars to political campaigns; labor interests gave over $96 million, a tenth of this total.

Soft and Hard Money

BCRA's chief accomplishment concerned "soft money." Before BCRA, anyone—including individuals, corporations, labor unions and special interest groups—could contribute an unlimited amount of money to national political parties for "party building activities." Such activities excluded money spent on behalf of individual candidates, but included a broad range of activities such as advertising designed to encourage voters to go to the polls (including providing transportation from heavily partisan neighborhoods) and paying rent and salaries at party offices. The Federal Election Commission defines soft money as "funds raised outside the limitations and prohibitions of the Federal Election Campaign Act. It is prohibited from being used in connection with a federal election." "Hard money," in contrast, is given directly to candidates to be used to pay for advertising, staff salaries, campaign headquarters space and other costs incurred by the campaign.

While BCRA bans soft money given to national political parties, local parties are permitted to collect soft money donations of up to $10,000 per donor each year. These local parties, in most cases affiliated with national political parties, are governed not by federal regulations but by state regulations, which vary considerably. Corporate and union soft money contributions are currently legal in every state except Connecticut, leading many campaign finance advocates to worry that corporations will try to influence the political process at the state level, where disclosure regulations are often less stringent.

In order to compensate for the loss of soft money by political parties, BCRA increased limits on the amount of direct donations to specific campaigns (know as hard money). Individual candidates can use these funds for advertising and other campaign expenses. Before the enactment of BCRA, individuals were limited to $1,000 in contributions per candidate in each election. Individuals are now allowed to give $2,000 per candidate in each election, an amount that will be indexed to inflation. Primary and general elections count as separate elections, meaning that an individual may give a candidate up to $4,000 per complete election cycle. No individual may give more than $95,000 in hard money within a two-year election cycle. (The law provides higher campaign contribution limits in situations in which a candidate's opponent is a wealthy individual financing his or her own election.) In general, increases in limits on the amount of hard money donated by individuals are seen as likely to benefit Republican candidates, who have relied more heavily on hard money in past elections.

Seven companies targeted by this year's resolution gave more than a million dollars to political parties in the form of soft money during the 2002 election cycle. The top spenders were American International Group ($1,639,218), Verizon ($1,626,137) and Citigroup ($1,593,660). Several proponents of the resolution were also big spenders; SEIU tops the list with $4,682,739 in soft money contributions.

Political Action Committees

The BCRA did not change the limits on contributions to and by political action committees. PACs are political groups, funded at the federal level by contributions of up to $5,000 per year from individuals, that make contributions to candidates of up to $5,000 per candidate per year. PACs allow groups of individuals who may not be able to make large contributions to pool their resources in order to make a more sizeable contribution to a candidate. PACs also allow candidates to receive more than $2,000 per election from a given supporter, since the supporter can make a contribution directly to the candidate and make a separate donation to a PAC that might then choose to give the money to the same candidate. (Once an individual has made a contribution to a PAC, she or he has no say over which candidates the money can be donated to, but most PACs make their general positions on issues clear.)

While corporations are not allowed to make direct contributions to candidates, they are allowed to fund the administrative support for a PAC to which their employees make contributions. Some observers, including the Supreme Court, have referred to calculations that expenditures equal to 25 to 50 percent of contributions as probably typical. Employers are not allowed to require their employees to contribute any money to a corporate PAC. In practice, most corporate PACs

Political Contributions: Available Company and Proponent Information

Company	Soft Money*	PACs*	527s**	Total Donations	Lobbying*	Net Expenditures
Abbott Laboratories	$335,450	$323,274	$78,500	$737,224	$4,840,000	$5,577,224
Altria Group (Philip Morris)	$2,901,198	$927,115	$1,417,043	$5,245,356	$11,220,000	$16,465,356
American Express	$324,780	$179,055	$102,795	$606,630	$1,440,000	$2,046,630
American International Group	$1,639,218	$193,000	$485,979	$2,318,197	$3,620,000	$5,938,197
AMR (American Airlines)	$680,872	$183,434	$326,084	$1,190,390	$3,040,000	$4,230,390
AmSouth Bancorporation	$185,000	$200,686	$16,000	$401,686	$80,000	$481,686
Bank of New York	$50,000	$21,683	?	$71,683	$100,000	$171,683
BellSouth	$1,103,411	$661,909	475201	$2,240,521	$3,066,112	$5,306,633
Bristol-Myers Squibb	$1,267,817	$119,704	$286,000	$1,673,521	$4,660,000	$6,333,521
Chevron Texaco	$1,010,300	$224,929	$56,500	$1,291,729	$3,157,612	$4,449,341
Chubb	$279,890	$117,084	$72,532	$469,506	$1,026,951	$1,496,457
Citigroup	$1,593,660	$646,415	$649,482	$2,889,557	$4,120,000	$7,009,557
Comcast	$197,500	$498,252	$320,000	$1,015,752	$620,000	$1,635,752
DuPont	$46,700	$150,423	$157,050	$354,173	$1,800,000	$2,154,173
Exxon Mobil	$365,000	$468,237	$88,000	$921,237	$7,077,963	$7,999,200
First Energy	$350	?	$72,000	$72,350	$40,000	$112,350
General Electric	$733,812	$948,828	$215,000	$1,897,640	$16,020,000	$17,917,640
Harrah's Entertainment	$578,620	$124,270	$421,695	$1,124,585	$80,000	$1,204,585
Hartford Financial Services	?	$260,633	?	$260,633	$1,040,000	$1,300,633
IBM	?	?	$25,000	$25,000	$4,860,000	$4,885,000
JP Morgan Chase	$196,111	$420,246	$155,000	$771,357	$7,509,324	$8,280,681
Lockheed Martin	$1,112,951	$713,295	$398,000	$2,224,246	$11,170,000	$13,394,246
Merck	$87,954	$413,360	$158,295	$659,609	$2,823,020	$3,482,629
Morgan Stanley	$519,185	$441,941	$24,500	$985,626	$400,000	$1,385,626
PepsiCo	$907,600	$226,480	$143,097	$1,277,177	$1,347,000	$2,624,177
Pfizer	$1,354,561	$944,092	$952,645	$3,251,298	$3,440,000	$6,691,298
Pitney Bowes	$175,000	$61,540	$46,000	$282,540	$660,000	$942,540
Riggs National	?	?	$253	$253	?	$253
Safeway	$194,327	$128,363	$169,250	$491,940	?	$491,940
SBC Communications	$1,487,099	$1,113,434	$796,500	$3,397,033	$7,208,000	$10,605,033
Textron	$233,095	$293,215	$114,500	$640,810	$4,680,000	$5,320,810
Tribune	$20,000	?	?	$20,000	$110,000	$130,000
Union Pacific	$846,329	$997,202	$290,500	$2,134,031	$3,493,064	$5,627,095
Verizon	$1,626,137	$900,788	$820,152	$3,347,077	$10,480,000	$13,827,077
Wachovia	$184,286	$57,963	$35,000	$277,249	$20,000	$297,249
Waste Management	$113,092	$286,363	$269,180	$668,635	$320,000	$988,635
Wells Fargo	$59,872	$503,161	$12,850	$575,883	$720,000	$1,295,883
Wyeth	$932,322	$232,809	$413,500	$1,578,631	?	$1,578,631
Institutional Proponents#						
SEIU	$4,862,739	$5,984,559	$23,063,892	$33,911,190	$193,438	$34,104,628
Laborers	$2,300,000	$4,897,058	$6,068,986	$13,266,044	$240,000	$13,506,044
Teamsters	$50,000	$6,167,034	$346,750	$6,563,784	$1,320,000	$7,883,784
Carpenters	$3,868,709	$1,533,460	$397,750	$5,799,919	$100,000	$5,899,919
Sierra Club	?	$78,058	$3,972,482	$4,050,540	$165,000	$4,215,540

*Publicly available data from www.opensecrets.org. Soft money data from 2002 election cycle, PAC data from 2004 election cycle, lobbying data from 2000. ** Publicly available data on 527s from www.publicintegrity.org--Silent Partners study. Data comprised of reported donations

do little fundraising from personnel below the executive and administration levels or from stockholders.

Of the companies where the shareholder resolution is pending, employees at SBC Communications gave the most money through their PAC for the 2004 election cycle ($1,113,434), followed by Union Pacific ($997,202), General Electric ($948,828), Pfizer ($944,092) and Altria ($927,115).

Again, the labor union sponsors gave significantly as well; the Teamsters gave $6,068,986, followed by SEIU ($5,984,559), Laborers ($4,897,058) and Carpenters ($1,533,460). The large membership figures at these unions, compared to the number of employees at each company, could explain the significant difference in PAC contributions.

Section 527 Organizations

Shareholder proponents for the first time have mentioned "527 organizations" by name in the resolved clauses. These groups, named after the tax code that created them, are tax-exempt nonprofit political committees used by corporations, labor unions, and special interest organizations to raise money to influence political campaigns. The Center for Public Integrity (www.publicintegrity.org) has monitored contributions to Section 527 groups since August 2000, when they were first required to disclose their funding sources and expenditures. The Center refers to 527s as the "new soft money" because they "can raise unlimited amounts of money to influence elections" while "avoiding regulations by state or federal election authorities." The Center for Public Integrity identified 471 committees as 527s that "are not required to report their financial activities to state or federal election authorities; they are tied to or formed by a federal lawmaker; or they are active in many states and spend most of their money on such election-related activities as broadcast advertisements, mailings and political research." Section 527 groups disclose contributions and expenditures through the IRS. The Center found that the 527s are a funding vehicle primarily used by Democrats and their allies, predominantly labor unions, while Republicans have been more successful with individual contributions and PACs.

The Center for Public Integrity has a report on its website titled Silent Partners, with an accompanying database that allows users to identify contributors to 527s and the beneficiaries of such funds. According to the report, since disclosure requirements came into effect in 2000, the Section 527 organizations "accounted for just under $450 million in spending. Committees run by Democratic parties and candidates, along with their labor, environmental, abortion rights and trial lawyer allies, have spent nearly two-thirds of that total."

Of the companies targeted by the shareholder resolution, Altria spent the most money, contributing $1,417,043 to 527 organizations since August 2000. Pfizer followed with $952,645, Verizon gave $820,152, SBC Communications gave $796,500 and Citigroup gave $649,482. Several of the proponents of the resolutions have given substantially more to 527s. SEIU has given $23,063,892 to its own 527 since August 2000. The Laborers' union has given $6,068,986 and the Sierra Club has given $3,972,482.

Lobbying

Discussions of political contributions frequently include references to lobbying, which may have political donations as a component. The new resolutions submitted in 2004 do not address money given by corporations to influence the political process through lobbying activities, but Davis continues to raise this as a concern in her resolutions. Lobbying refers to meetings or other communications with elected officials or members of their staffs, during which the lobbyist explains his or her position on a given issue and may request that the official vote for or against a specific measure. Any person can lobby, but most lobbying at the federal level is done by professional lobbyists, who may be former government employees or former elected officials. In addition, professional lobbyists are frequent contributors to political campaigns.

Professional and volunteer lobbyists both tend to have greater knowledge of specific issues than those whom they are lobbying; as a result the lobbying process can be as much about education as it is about persuading. According to the American League of Lobbyists, "principal elements include researching and analyzing legislation or regulatory proposals; monitoring and reporting on developments; attending congressional or regulatory hearings; working with coalitions interested in the same issues and then educating" government officials and others on the implication of decisions. Lobbying is protected by the First Amendment, and all major industries have lobbyists working to promote their interests.

During 2000, the most recent data available, General Electric spent $16,020,000 on lobbying activity, followed by Lockheed Martin ($11,170,000), Verizon ($10,480,000), JP Morgan Chase ($7,509,324) and SBC Communications ($7,208,000). Union lobbying activity appears to be mostly done in house, but filings indicate that the Teamsters spent an additional $1,320,000 in lobbying activities.

As shown in the table on p. 12, IRRC has compiled the publicly available data on political contributions made by the targeted companies, as well as the institutional shareholder proponents that have submitted the resolutions. It is evident that the information available is not complete, nor are most recent years of activity disclosed. Soft money data are from the 2002 election cycle, before the McCain-Feingold bill took effect.

—Daniel McQueen

CSR Grows in Importance, Reports Say

Two organizations last month released reports that document how and why public attention to corporate social responsibility has grown in recent years. The World Economic Forum highlights such factors as the public outrage over the recent wave of corporate scandals and the increased "active ownership" by mainstream institutional investors. U.K. based Echo Research says press coverage is another factor: its latest survey confirmed that press coverage of corporate social responsibility issues jumped 407 percent between 2001 and 2002.

Making the Case

The World Economic Forum's report, Values and Value: Communicating the Strategic Importance of Corporate Citizenship to Investors, notes that after scandals at Enron, WorldCom and Tyco, and more recently, Parmalat, revealed distorted bottom lines and manipulated share prices, investors have begun to scrutinize corporate governance and other practices more closely. Shareholder ire over these scandals led in the United States to the passage of the Sarbanes-Oxley Act of 2002—which sets forth more stringent requirements for corporate accounting oversight, auditor independence and financial disclosure. The controversies also prompted the Securities and Exchange Commission to require investment managers to disclose their proxy voting guidelines and how they vote their shares in U.S. portfolio companies. Similarly, concerns in other countries about corporate abuses, the WEF said "have intensified investor interest in corporate citizenship and corporate governance."

Another driver of these trends, the WEF says, has been the increase in what it calls "active ownership" by mainstream institutional investors in matters beyond corporate governance and financial accounting. For example, the report noted that a group of U.S. state and city treasurers and trustees, with fiduciary responsibility for some of the most influential pension funds in the country, has "not only made public calls for governance change at the New York Stock Exchange, but also joined environmental groups and socially responsible investment fund managers to call for greater investor focus on the risks and opportunities posed by climate change." (For more information on this issue, see the December 2003 *Corporate Social Issues Reporter*, "Pension Funds Form Investor Network on Climate Risk.") In addition, the report points out, the AFL-CIO, which represents the interests of some 13 million unionized workers in the United States and with over $6 trillion invested in health and pension funds, intensified its "capital stewardship" campaign. This campaign seeks to use workers' shareholder powers to encourage more long-term and sustainable value creation.

The WEF also noted the growing influence of socially responsible investing. While the SRI movement still represents only a small fraction of professionally managed assets, the report said, it "continues to grow in terms of size, sophistication, geographic scope and influence." For example, Dow Jones, which launched its Sustainability Index in 1999, said in a recent press release that assets managed in accordance with its sustainability index grew more than 40 percent in 2003, to stand at nearly $3.18 billion as of January 2004. The WEF also cited statistics from the Social Investment Forum that socially screened funds in the United States grew 6.5 percent between 2001 and 2003, while mainstream portfolios fell 4 percent. "SRI fund managers have also become more active in engaging with executive management teams," the WEF said, "not only through proxy voting at annual general meetings but also through regular dialogue and meetings. Many are increasingly involved in debates on public policy…aligning financial sector interests with a shift towards more sustainable patterns of economic growth."

The report credits as well the increasingly sophisticated campaigns of non-governmental organizations and shareholder activists. "Non-governmental organizations such as Friends of the Earth, the World Resources Institute, Human Rights Watch, Amnesty International, Global Witness and Oxfam are starting to target the financial sector in some of their campaigns," the WEF said, "seeing it as a key leverage point to influence corporate behavior on issues ranging from climate change and human rights to access to essential drugs and fair trade." These groups are "bringing in people with financial expertise and undertaking increasingly rigorous and analytical research on the business risks and opportunities associated with a company's ethical, social and environmental performance."

Finally, the WEF says companies are facing new international norms and expectations for sustainable development as a result of such relatively recent initiatives as the Global Reporting Initiative, the U.N.'s Global Compact and the WEF's Global Institute for Partnership and Governance. "Although these have a less direct impact on corporate behavior than national laws and regulations," the WEF said, "they nonetheless contribute to growing awareness by business leaders and investors of the strategic importance of responsible business practices." In addition, the emergence of more comprehensive sustainability reporting guidelines,

such as the GRI, has given advocates of sustainability reporting a negotiating tool—a precise benchmark and format they can ask companies to follow.

In spite of these new developments, a major barrier to companies implementing sustainability programs and reporting is the difficulty of making the business case that the benefits of these programs will justify their expense. According to the WEF's report, recent surveys of company executives and investors indicate that the private sector does perceive long-term benefits to responsible or sustainable corporate behavior in areas such as attracting talent and enhancing corporate reputation, operational efficiency and business opportunities. These benefits, however, are not immediately recognizable or measurable, the report notes. Almost every respondent to its survey cited obstacles to measuring the financial benefits of corporate social responsibility practices, including their effects on income, balance sheets and stock performance.

In addition, the "intangible" benefits reaped from socially responsible corporate behavior have little influence on short-term changes in share prices, on which mainstream investors remain almost exclusively focused. One company executive told the WEF, "The continuing pressure for short-term performance affects the ability of management to think long term. It is difficult for managers of corporations to 'do the right thing' with regard to corporate social responsibility when being driven purely by profit-oriented investors. Investors must be educated as to long-term positive effects of corporate social responsibility."

Nonetheless, the slow but certain change toward sustainable business practices seems likely to continue, the WEF believes. Two major surveys of institutional investors and company executives illustrate this outlook, according to the report. One was the 2003 survey of 388 European fund managers, financial analysts and investor relations officers by international consulting firm Deloitte in collaboration with CSREurope and EuroNext. It found that slightly more than half of the fund managers and analysts and 47 percent of the investor relations officers believed that social and environmental considerations would become a significant aspect of mainstream investment decisions over the next two years. More than half (56 percent) of the investor relations personnel believed intangible assets make significant contribution to shareholder value, while a little more than 40 percent of the fund managers and analysts thought so.

In another survey last year, Russell Reynolds Associates interviewed nearly 400 institutional investors in the United States, United Kingdom, France, Germany, Japan and China with the aim of discovering how these investors make investment decisions. The survey found that investors in all countries felt that corporate executives, especially CEOs, should practice social responsibility (59 percent) rather than focusing exclusively on profit (35 percent). Such emphasis on social responsibility was stronger among investors in France (89 percent) and Germany (79 percent) than in the United States (53 percent). The survey further indicated that about two thirds of investors feel that corporate governance practices are a very important consideration when making investment decisions. This sentiment, the survey found, jumped from 53 percent in 2000 to 71 percent in 2003 in the United States.

Feeling the Heat

The threat of bad press, or the rewards from a good image, according to the Echo Research study, might play an increasing role in whether companies adopt better practices. Echo found that the number of articles featuring an issue related to corporate social responsibility increased 407 percent between 2001 and 2002, even faster than the breakneck jump of 52 percent the group reported between 2000 and 2001. As part of the study, researchers collected and analyzed 5,324 filings, which included news articles, feature stories, letters to the editor and editorials, from major print newspapers and wires based in the United Kingdom, the Untied States, France, Germany, Australia and South Africa.

Articles were generally rosy on the business case for corporate social responsibility, with a solid 88 percent noting economic benefits from good practices. From the most frequently cited to the least, those benefits were better public relations and image, financial performance, community relations, employee retention and satisfaction and shareholder relations. They also found reporters generally divided on their view as to whether companies practice corporate social responsibility—or say they do—for genuine reasons (52 percent) or simply for the sake of appearances (48 percent). Either way, an overwhelming majority of the articles on how companies report on these issues—71 percent—said that companies were not communicating their efforts effectively.

The **Body Shop International**, **Bertelsmann**, **BP**, **BT Group**, **The Cooperative Bank**, **Danone**, **Eskom**, **IG Metall**, **Lafarge**, **Royal Dutch/Shell**, **Siemens**, **Suez** and **Westpac** Banking were the companies most often reported on favorably. **Absa**, **Cape**, **Enron**, **ExxonMobil**, **The Gap**, **Telstra**, **Tyco International** and **Wal-Mart** received the most negative press on their corporate social responsibility records. The events that generated the most stories, the report said, were the Enron scandal, the formal launch of the Global Reporting Initiative, the passage of the Sarbanes-Oxley Act and the United Nation's summit on sustainability in Johannesburg.

—Peter DeSimone and Sol Kwon

KFC Plans to Enter Tibet as BP Divests

Yum Brands' chairman and CEO David Novak announced to investors and analysts in December, "we will actually have KFCs in Tibet in 2004." The company (which also owns the Taco Bell and Pizza Hut restaurant chains) already operates 1,000 KFC restaurants in "every province in China, except for Tibet," and those restaurants bring in "almost as much money as the United States KFC business," Novak said. In January, the company's greater China president, J. Samuel Su, said he believes the company has already received permission from the Chinese government to expand into the remote region. Also in January, BP announced that it was selling its 2.2 percent stake in PetroChina, a stake that raised the ire of activists upset over a pipeline PetroChina built through Tibet.

KFC will not be the first Western consumer brand in Tibet. Pabst Blue Ribbon beer (produced by a Chinese subsidiary of the privately held Pabst Brewing Company) is heavily advertised in Tibet, for example, and Holiday Inn operated a hotel in Lhasa from 1993 to 1997. Many western oil companies also advertise in Tibet, International Campaign for Tibet President John Ackerly told IRRC. Still, Ackerly said, the opening of a KFC in Tibet could be "a turning point for multinationals."

Investment Guidelines

Western companies are rare in Tibet both because the region is rugged and remote and because of political instability. While China claims Tibet as one of its provinces, Tibet has its own cultural and religious identity and was an independent nation from 1912 to 1950, when China invaded. Tibetans in India have established a government in exile, headed by Nobel Peace Prize winning Tibetan activist and religious leader the Dalai Lama. This government has published a set of guidelines for aid and investment projects in Tibet, requesting that such projects "be implemented only after conducting a thorough need-assessment of the Tibetan people through field visits and interviews," including cultural, social and environmental impact assessments. It suggests that agencies maintain a Tibetan presence at all stages of the project. The exile government also requests that projects be conducted in Tibetan and that they respect Tibetan culture and traditions. Yum did not respond to IRRC's request for further information about the company's planned expansion into Tibet, and did not confirm whether it will follow these guidelines before opening a KFC in Tibet.

Ackerly told IRRC that reaction to a KFC restaurant by Tibetans, both in Tibet and in exile, "would in part depend on the company's leadership. Tibetans are very sensitive to the staging of these things." For example, if the restaurant were to hold a grand opening ceremony featuring local Chinese officials who described the restaurant using Communist clichés about progress and bringing a better standard of living to Tibet, "the company could be very unpopular" and would indirectly aid the Chinese government's efforts to portray Tibet as a primitive region in need of Chinese development strategies. KFC could also make a serious misstep by placing its restaurant near a major temple (particularly in light of the fact that birds have not traditionally been part of the Tibetan diet). The true opinions of Tibetans are "sometimes hard to tell," however, "because the government is so repressive—much more so in Tibet than in eastern China."

Student Protests

Lhadon Tethong of Students for a Free Tibet told IRRC that she is "appalled, but not surprised" by the introduction of a fast food chain in Tibet. Tethong told IRRC that SFT, which has between 600 and 700 chapters worldwide, is entirely opposed to the opening of a KFC in Tibet. "The Chinese government holds Tibet with an iron fist," she said. "The Chinese people chose to allow U.S. companies into their country, but in Tibet, the stakes are different. Tibetans are not free to say which companies come in and which ones don't. Until Tibetans can control their own lives and the future of their country, we oppose any corporation joining hands with the Chinese government to profit inside occupied Tibet."

Noting that KFC, Pizza Hut and Taco Bell are among the many fast-food restaurants with presences on or near U.S. campuses, Tethong said that "there are great opportunities for SFT members to embarrass" Yum over its plans in Tibet. "Politically conscious and aware students" are generally leery of fast food restaurants and of the export of American culture, she noted, which may provide further inspiration for protests. "The company should be a bit worried" about the pressure it may face from activists, she said. John Ackerly of ICT echoed this sentiment, saying: "I'm not sure the company realizes how controversial an issue this is."

Yum is not the first U.S. corporation to encounter SFT protests regarding its operations in Tibet. In 2001, Pabst Blue Ribbon's Chinese subsidiary erected a billboard in Lhasa marking the 50th anniversary of China's invasion of Tibet, which deposed an independent government and incorporated the nation as a province of China. The billboard hailed the "50th Anniversary of the Peaceful Liberation of Tibet." SFT organized a letter-writing campaign, and Pabst's corporate offices received thousands of faxed and e-mailed letters protesting the billboard. "The CEO got back to us al-

most immediately," Tethong told IRRC, and the billboard was removed within weeks. Holiday Inn's Lhasa hotel was also the target of protests, and activists claimed victory when the company withdrew in 1997.

BP Divests from PetroChina

ICT and SFT both agree that projects involving the extraction of natural resources are particularly problematic, because they can be environmentally harmful, often involve the influx of non-Tibetans into Tibet, undermining Tibetan culture, and because Tibet is not fairly compensated for the extracted resources. These issues were central to an activist campaign against BP, which acquired a 2.2 percent stake in PetroChina in 2000. A 2001 shareholder resolution asking BP to divest of its PetroChina stake received 5.2 percent support. PetroChina is behind one of the most controversial natural resource extraction projects in Tibet, a nearly 600-mile long pipeline leading from Sebei in Tibet's Tsaidam basin to Lanzhou in China. Critics of the project say that the pipeline project will damage Tibet's fragile ecosystem and will serve as a pretext to bring more Chinese workers into Tibet.

While activists cheered the news of BP's sale of its stake in PetroChina, the company has never backed down from its position that its ownership of PetroChina was not harmful to the people of Tibet. "Our equity investment in PetroChina has been very successful and we believe now is an appropriate time to divest the shares," the company said in a press release announcing the divestment. "BP remains committed to our business with PetroChina—and in China as a whole."

—Jan Fetter-Degges

Citigroup, RAN Reach Accord on Environment

"World's Largest Bank Makes Huge Step Toward Sustainability," trumpets the lead headline on the Rainforest Action Network's website. In what RAN calls "One of the most important advances in environmental protection and corporate responsibility in recent memory," the environmental activist group and Citigroup Jan. 22 announced a new set of policies for the bank's management of investments in projects that destroy forests or otherwise accelerate climate change. RAN is now moving on to new banking targets and looking for similar results.

Background

The new policies are the culmination of a RAN campaign against Citigroup that had its start in 2000. That year, RAN launched an effort to "bring social and environmental accountability to all aspects of Citigroup's business practices." As the one of the world's largest financial institutions, RAN said, Citigroup "finances corporate-led globalization that is devastating our communities and the environment." RAN staged a protest at the company's April 2000 annual general meeting, calling Citigroup the world's "most destructive bank." Citigroup executives met with RAN protesters after the meeting to discuss the group's concerns, but no commitments were made.

In September 2000, RAN launched a formal boycott of Citigroup, calling on college students not to use Citibank credit cards or work for the company after their graduation. RAN staged two "Citigroup Days of Action" leading up to the company's 2001 annual meeting, involving some 80 demonstrations in 12 countries. By October 2001, RAN said it had received 12,000 student pledges refusing to do business with "the #1 funder of global warming."

RAN then submitted a shareholder resolution for the 2002 annual meeting asking the company to report on its "carbon liability" and to study the feasibility of shifting its project financing to "renewable energy and community-based sustainable development." Management opposed the resolution on grounds that it would be burdensome and "add little benefit to its existing practices regarding the environmental and social implications of our business," but it did conduct an inventory of greenhouse gas emissions from the 10,000 buildings it leases or owns around the world. The proponents refiled the resolution for 2003 along with a second proposal asking it to "produce a strategy that positions Citigroup as an environmental leader by meeting or beating the industry's best practices regarding environmental protection including old growth forest protection and climate change."

The resolutions got considerably less support than greenhouse proposals to utilities and manufacturers—5.1 and 5.9 percent last year—but Citigroup continued meetings with RAN that culminated in the Jan. 22 policy announcement. When it came, Citigroup Chief Executive Officer Charles Prince said, "We believe we can make a difference by holding ourselves accountable for our own impact on the environment, by embedding our commitment to environmental responsibility in our lending practices, by embracing sustainable business opportunities and by engaging in the public domain on these issues to help foster solutions to often very thorny questions."

The Policies

The new policies have four major sections. They focus on (1) investments

in what Citigroup calls "high-caution zones," (2) steps to deter illegal logging, (3) investments in ecologically sustainable development and (4) efforts to mitigate climate change.

High-caution zones: Citigroup pledges to carefully evaluate requests for project loans that would directly fund activities that it finds could have an adverse effect on critical natural habitats. The bank won't finance projects unless the borrower has demonstrated, among other things, that the sponsors have considered economic and technically feasible alternatives to avoid such areas, that the project won't degrade habitat, and that affected indigenous peoples are informed and involved. This commitment is in line with Citigroup's participation in the "Equator Principles" for banking that were announced last June. (August-September Corporate Social Issues Reporter pp. 14-15)

Illegal logging: Citigroup will require borrowers seeking loans involving the extraction or processing of forest resources to demonstrate that they are in compliance with laws on illegal logging. It says it will participate in forums on illegal logging and support organizations that advocate forest law enforcement and reform.

Ecologically sustainable development: Citigroup has developed a program for investment in sustainable forestry and renewable energy. It says it sees "immediate opportunities" for investments in independently certified sustainable logging that involve low-impact logging and "marketing branded sustainable product." It plans to identify experts to evaluate investments in wind, solar, hydrogen and biomass technologies. It will also explore existing programs for clean energy for residential consumers, and it will offer a Fannie Mae energy efficient mortgage in 2004.

Climate change: Citigroup endorses the finding of the UN Intergovernmental Panel on Climate Change that "human activities are changing the climate." It intends to reduce greenhouse gas emissions from its own operations and will also report the greenhouse emissions from the power sector projects that it finances. Citigroup says, "This is the first time that a private bank will offer such data, which will be produced with methodologies peer reviewed with experts and NGOs."

The full text of the new policies, which runs four pages, is available at www.citigroup.com/environment/data/initiatives.htm.

Reactions

Steve Lippman, senior social research analyst at Trillium Asset Management and part of the shareholder coalition with RAN on this issue, told IRRC that Citigroup's agreement concerning high-caution areas "establishes a really important precedent" because it places a burden on the prospective finance client to demonstrate that the project or venture will not cause environmental harm. He acknowledged that what constitutes a "high-caution" area is still being defined, but that it definitely will encompass tropical rain forests. He also noted that Citigroup has committed to reporting on its implementation of this policy, including what it agrees to finance and what it turns down.

Citigroup's new policy also drew praise from Dale Heydlauff, the senior vice president for government and environmental affairs at American Electric Power and head of the Business Roundtable's Climate Resolve program, which encourages Roundtable members to take voluntary actions to reduce their greenhouse gas emissions. He noted at an IRRC conference this month that while about 65 percent of the Roundtable's members have signed on to the program, financial institutions have been underrepresented in this group. Therefore, he said, he was "thrilled that Citigroup has shown leadership" with its new statement of its intent to reduce its greenhouse gas emissions and to report on the emissions from the projects it finances.

New Targets

RAN's website (www.ran.org) now announces a new "Global Finance Campaign," saying that "while Citigroup is taking steps forward, other banks are dragging their feet." It identifies as "Liquidators" 10 banks that it says lack environmental standards—JP Morgan Chase, Bank One, Bank of America, Fleet Boston Financial, Wells Fargo, Goldman Sachs, John Hancock, Wachovia, U.S. Bancorp and SunTrust. The website includes sample letters that can be sent to the banks expressing "dismay" over their lack of action on forestry issues and steps to prevent global warming.

—Carolyn Mathiasen and Meg Voorhes

(continued from p. 8)

chises with this request.

The Calvert Group has withdrawn six of its batch of resolutions asking companies to report using Global Reporting Initiative Guidelines, at **Chesapeake Energy, Genuine Parts, Masco, Visteon** and **XTO Energy** and **York**. Visteon and Masco have already agreed to produce a GRI-based sustainability report; Chesapeake Energy, York and XTO have agreed to disclose key social and environmental information, including industry-specific indicators. At Genuine Parts, Calvert withdrew the resolution hoping to continue productive discussions.

Carolyn Mathiasen and Meg Voorhes

Checklist