FEDERAL REGULATION IS NOT AN EFFECTIVE DETERRENT TO CORPORATE MALFEASANCE

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Introduction

Conscientious and effective corporate governance in the United States has been declining sharply for at least the last two decades. Most of the large, publicly held corporations comprising the Dow Jones Industrial Average have been implicated in egregious corporate wrongdoing in recent years. When the wrongdoing has been challenged, more often than not the consequences to the corporation have been minimal in comparison with the advantages gained by the wrongdoing. In nearly all instances of multi-million dollar settlements with regulatory agencies, the corporation has been permitted by the regulatory agency to refrain from admitting wrongdoing. The types of corporate malfeasance run the gamut from violations of the False Claims Act, Foreign Corrupt Practices Act, federal securities laws, environmental laws, Medicaid Rebate Statute, Food, Drug & Cosmetic Act, Racketeer Influenced and Corrupt Organizations Act, Anti-Kickback Statute, and numerous other legal obligations. Many are civil violations but there are also numerous instances of criminal charges.

Causes of Corporate Malfeasance

The causes of this widespread lapse in corporate governance are numerous. One of the causes is the growth of market fundamentalism promoted by the Chicago School, several prominent economists and most of corporate America. The concept that unregulated market forces regulate corporate activity in a way that serves the public interest has never been able to withstand careful objective analysis. That the concept is patently absurd was demonstrated with a vengeance by the financial crisis in 2007-8. Yet many market fundamentalist pundits continue to proclaim its effectiveness and clamor for still further deregulation of corporate activities.

Perhaps the forces of the market place could somewhat lessen corporate malfeasance under circumstances of complete transparency. But such circumstances do not exist under our legal system. For example, there is no user-friendly Securities & Exchange Commission (SEC), Department of Justice (DOJ) or other governmental agency website that reveals all of the charges against, investigations and convictions of and settlements with any particular company. Both the SEC and DOJ should have websites on which the entry of a corporation's name or listing symbol would reveal all of that company's involvements with that regulatory agency for the greater of a ten-year period or the incumbency of the current CEO. (The DOJ will assert that EDGAR filings serve this purpose but anyone who has sought to use EDGAR filings as a source to uncover corporate malfeasance will attest that this filing system is not designed for and does not serve this purpose in any meaningful way. Edgar filings are composed by the corporation and its counsel. Major fines and penalties are sometimes buried in documents hundreds of pages long, often in notes to financial statements. Furthermore, SEC disclosure requirements may not necessitate disclosure in a major corporation's SEC filings of significant derelictions because of materiality standards and the relatively small amount of a fine or penalty, in relation to the massive balance sheet figures of such companies.) While both the SEC and DOJ enforcement branches focus more on individual than corporate derelictions, unfortunately both agencies rarely challenge the conduct of members of senior management of major corporations, even when it is clear that a member of senior management had advance knowledge of, or participated in, the malfeasance. There have even been instances of DOJ charges against an employee of a subsidiary of a public company in which the DOJ release does not identify the parent public company.

A second important cause is the failure of our regulators and legal system to impose meaningful sanctions on corporate malfeasance. The recently increased use of so-called deferred prosecution agreements and non-prosecution agreements attests to this fact. The actions and inaction of our regulatory agencies often encourage, rather than discourage, corporate wrongdoing because sanctions are infrequently imposed and, when imposed, are often insufficient to deter future wrongdoing that would enhance short-term corporate profitability. Set forth below are numerous instances in which the SEC or DOJ and other federal regulatory agencies have settled cases of serious corporate malfeasance without insisting on an admission of wrongdoing by the corporation. In many, if not most, of these settlements, the benefits to the corporate wrongdoer probably greatly exceeded the fines imposed. Furthermore, many instances of corporate wrongdoing are never challenged by the regulatory agencies. In a financial system so narrowly focused on short term profits, this combination of lenient sanctions and infrequent regulatory challenges encourages the types of wrongdoing that will enhance profits, if undected.

Not only does the corporate entity emerge from those SEC and DOJ proceedings virtually unscathed, but almost invariably senior management is also unscathed. In many such cases the prior knowledge of the offense by senior management is apparent. When a member of senior management encourages, condones, has prior awareness of or reasonably should have had prior knowledge of the malfeasance, that member of senior management should be charged with wrongdoing and the corporation should not be permitted to settle without admitting the wrongdoing. Wrongful actions or inaction by senior management should have widely publicized adverse consequences for both the corporation and the senior manager.

What is the reasoning underlying the reluctance of the SEC and DOJ to insist upon an admission of wrongdoing by the corporation? One convenient—but fallacious—excuse is the regulators' professed concern about the impact of a corporate admission of guilt upon innocent shareholders. This erroneous reasoning ignores the widespread harmful consequences to both investors and the general public of these SEC and DOJ whitewash proceedings. This policy encourages and greatly exacerbates future corporate wrongdoing.

A direct and devastating consequence is that analysts pay virtually no attention to corporate malfeasance unless it rises to the level of the Enron and Tyco fraud convictions of the 1990's. Even the most reputable and reliable investment analysts such as Morningstar, Value Line, and

Schwab rarely take account of corporate wrongdoing in their analyst reports, even when huge fines have been exacted. True, Morningstar and Fidelity pay some lip service to general principles of corporate governance such as annual election of directors and separating the CEO and chairman positions. But their analyst reports rarely mention, and typically ignore, most occurrences of serious corporate misconduct. To confirm this, the reader need only search out the analyst reports by Morningstar, Value Line, or Schwab on the corporations listed below that settled SEC or DOJ charges of wrongful conduct by paying substantial fines, but without admissions of wrongdoing. Almost none of these analyst reports make any mention of the corporate misconduct or the often substantial fines paid by the corporation being analyzed. In numerous instances, these were repeat violations.

If an admission of wrongdoing were required when the SEC or DOJ settlements are entered into, analysts would not have the luxury of ignoring the wrongdoing and the investing public would have much greater visibility of the widespread corporate misconduct that has become more the rule than the exception with large public corporations in the United States. In fairness to the analysts, it is difficult for them to ascribe significance or importance to a settlement and payment of even a sizeable fine when the SEC or DOJ has seen fit to settle without an admission by the corporation. If challenged in an analyst report, the corporate wrongdoer would probably respond that it was innocent but wished to avoid the expense of litigation. The initial charges by the regulatory agency are often a better indication of the challenged corporate misconduct than the settlement agreement. These charges never appear in an analyst report and are rarely conclusively documented because the regulator habitually settles without an admission of wrongdoing.

There is widespread acknowledgement among economists and analysts of the importance of full disclosure by, and transparency with respect to, public companies. Yet the advocates of full disclosure and transparency largely ignore the issue of corporate malfeasance, which should be an important factor in the making of investment decisions. If an admission of corporate wrongdoing were exacted by the SEC and the DOJ at the times of these settlements, this undoubtedly would have a substantial deterrent effect on future derelictions by the offending corporations. Such revelations would admittedly trigger law-suits that would inflict further harm on the corporate wrongdoer. This would add to the deterrent effect of the disclosures. While this would inflict harm on shareholders, it would ultimately lead many investors and investment advisors to factor good governance into their selection criteria. Following the current practice of the SEC and the DOJ substantially encourages corporate malfeasance by assuring that it does not receive the attention that it deserves. The absence of an admission virtually guarantees that analysts will not mention or give any weight to the dereliction.

Both the SEC and DOJ will respond that exacting an admission of wrongdoing would drastically reduce their success rates and overtax their resources. But a lesser success rate founded on admissions of wrongdoing would have a far greater deterrent effect on future violations than the deeply flawed current practice. The primary function of both agencies in arriving at these settlements should be to reduce substantially the frequent occurrences of corporate malfeasance. Today this function is not being discharged. Both agencies are failing to do so. Both are thereby encouraging further corporate misconduct.

A lesser, but not insignificant, factor in the passivity of the SEC and DOJ toward wrongdoing by major corporations is the revolving door through which some of their decision makers wish to exit to highly lucrative positions with the regulated companies or their lobbyists, consultants or counsel. Those who accept the public trust of law enforcement against public companies should be required to defer the opportunity for career enhancement in the private sector for a substantial period after leaving government service. This presumably would necessitate higher salaries to attract and retain qualified regulators. The increased cost of effective regulation is fully warranted.

Another cause of the lapse of good corporate governance is the huge size of our major corporations. The focus of this paper is the frequently recurring misconduct of most of the thirty massive public corporations comprising the Dow Jones Industrial Average. The permissive interpretation of our anti-trust laws in the last three decades, market fundamentalist and deregulatory advocates, captive regulatory agencies and a largely dysfunctional Congress oblivious to the huge harm to our society wrought by widespread corporate malfeasance all have resulted in the creation of corporations so vast that they are virtually unmanageable. [As noted below, one general counsel of a Dow 30 company has acknowledged this in testimony before Congress.]The derelictions of companies such as Bank of America and J.P. Morgan Chase in the recent financial crisis attest to this conclusion. A return to the sound perspective about corporate size of Supreme Court Justice Louis Brandeis and President Theodore Roosevelt is not feasible. But continued disregard of rampant public company wrongdoing is seriously undermining our economy and indeed our culture. The vast power wielded by our major corporations over the laws and regulations applicable to them has been a significant contributing factor in the rapidly increasing inequality of our populace, with one percent of our population earning twenty percent of the nation's total income and owning more than a third of the nation's wealth. Some recent attention has been given by the media to the huge size of our leading financial institutions but little attention has been focused on the huge growth of other major corporations and the often harmful consequences of that growth. Their lobbyists virtually dictate regulatory rule making and federal and state legislation affecting corporations. Indeed several states have enacted laws affecting corporations drafted by the American Legislative Exchange Council, a not-for-profit lobbyist organization funded by large public corporations.

The conduct of corporate operations through multiple subsidiaries is another factor exacerbating corporate wrongdoing. For example, Johnson & Johnson, our eighth largest public company and one that has been implicated in multiple instances of serious corporate wrongdoing in recent years, has listed approximately 275 subsidiary companies. No member of the senior management or the board of directors of the parent company could even remember the names or functions of all of these subsidiaries, let alone monitor their compliance with applicable laws and regulations. Johnson & Johnson is not unique in this regard. Merck, also a company that has paid numerous large fines and been implicated in many instances of wrongdoing, lists approximately 460 subsidiaries. A Google search discloses 38 pages of Bank of America subsidiaries, too numerous for this writer to count.

In enterprises this vast and complex, good corporate governance cannot be achieved unless senior management and the board of directors of the parent company ascribe the highest priority to compliance with applicable laws and regulations, vigorously enforce this policy, and assure that the senior management of each subsidiary is capable of and dedicated to such compliance. Unfortunately, in many public companies, good governance is not the highest priority. Increased short term profits, quarter after quarter, regularly trumps good governance. The means of achieving this profitability goal not infrequently involve corporate malfeasance intended to enhance profits. Executive bonuses, stock options and salary increases are closely attuned to short term profits and stock prices, and not at all attuned to good governance.

Numerous other factors contribute to the decline of effective corporate governance of our public corporations and the increase in public company malfeasance. These include: 1) the inadequate funding by Congress of our regulatory agencies; 2) the reluctance by some government enforcement attorneys to take on the large and powerful law firms representing our major public corporations; 3) the settlement leniency accorded to self-reporting corporations (that often report their transgressions, after the misconduct becomes known, expressly to induce lenient treatment and avoid the necessity of an admission of wrongdoing); 4) willingness of regulators to mitigate sanctions in reliance upon the offending corporation's professed establishment of internal controls and cooperation with the regulatory authorities, after the fact; 5) the huge lobbying efforts directed at Congress, the rule-making activities of regulatory agencies and state legislators by major corporations, the Chamber of Commerce, the National Association of Manufacturers, Heartland Institute, The American Legislative Exchange Council and multiple other lobbysts; 6) the waivers routinely issued by the SEC to financial institutions that settle wrongdoing charges by paying substantial fines, without admitting wrongdoing (such waivers permitting such financial institutions to conduct future financing that would otherwise be proscribed); 7) the executive compensation schemes devised by consulting firms, placing great emphasis on short-term profit and share price increments and virtually no emphasis on good governance; 8) the failure of our law schools and business schools to grasp and emphasize the importance of effective corporate governance; and 9) the excessive fees and other perquisites showered upon directors of large public companies, which mitigate against director attention to controversial governance issues.

<u>Widespread Instances of Corporate Malfeasance by Most of the Large Public Corporations Comprising the Dow Jones Industrial Average</u>

Following is a list of cases of alleged misconduct by the thirty corporations comprising the Dow Jones Industrial Average. Many of the following examples are cases in which federal regulatory agencies have agreed to settle instances of purported serious law violation in recent years without requiring the offending corporation to admit its misconduct. This list does not purport to be exhaustive. Many of the companies listed had multiple other instances in which they were implicated in serious wrongdoing.

ExxonMobil: In 2005, the United States concluded a settlement with ExxonMobil covering its North American refineries, requiring ExxonMobil to spend over $570 million to install emission control technologies at its refineries. ExxonMobil paid an $8.7 million civil penalty and committed to spend over $9.7 million on other projects to reduce further emissions. ExxonMobil failed to fulfill certain of its obligations, leading to a new consent decree and a commitment by ExxonMobil to pay an additional $6,064,500 in penalties. The new consent decree contained the following provision: "…*ExxonMobil denies that it has violated and/or continues to violate the foregoing statutory, regulatory, SIP provisions and other state and local rules, regulations and permits incorporating and implementing the foregoing federal requirements, and maintains that it has been and remains in compliance with all applicable statutes, regulations and permits and is not liable for civil penalties and injunctive relief as alleged in the Complaint*." If ExxonMobil was in full compliance with applicable law in this proceeding and its prior consent decree, query whether the company may have been guilty of wasting nearly $600 million of corporate assets by settling allegedly erroneous charges?

Notwithstanding the foregoing, ExxonMobil appears to be one of the few massive public companies that rigorously practices good governance and imposes good governance on all of its subsidiaries. It is believed that the Valdez occurrence may have induced Exxon to heighten and rigorously enforce its corporate governance standards.

Microsoft: SEC For Immediate Release 2002-80. On June 3, 2002 the SEC brought a settled administrative enforcement action against Microsoft ordering the company to cease and desist from committing accounting violations and other violations of federal securities laws. Microsoft allegedly misstated its income by material amounts in certain periodic filings with the SEC between 1994 and 1998, did not properly document the bases for these accounts and failed to maintain proper internal controls, as required by law. The SEC release states: "Microsoft consented to the issuance of the Commission's Order *without admitting or denying the findings."*

General Electric: SEC Litigation Release No. 21166, August 4, 2009. The SEC charged General Electric with accounting fraud, misleading investors by reporting materially false and misleading results in its financial statements. GE agreed to a $50 million penalty, "*without admitting or denying the SEC's allegations".*

General Electric: In SEC Litigation Release No. 21602, July 27, 2010, the SEC filed Foreign Corrupt Practices Act books and records and internal controls charges against General Electric and two GE subsidiaries, alleging that the subsidiaries made $3.6 million in illegal kickback payments to the Iraqi Health Ministry or the Iraqi Oil Ministry in order to obtain valuable contracts under the U.N. Oil for Food Program. GE agreed to pay over $23.4 million in disgorgement, interest, and penalties, *"without admitting or denying the allegations in the Commission's complaint…"*

General Electric: SEC Administrative Proceeding File No. 3-11677, September 23, 2004. *Without admitting or denying the findings*, GE agreed to cease and desist from failing to fully describe the substantial benefits it had agreed to provide its former CEO, "Jack" Welch. The SEC found that GE's proxy statements only referred to Welch's entitlement to 'continued lifetime access to Company facilities and services comparable to those that are currently made available to him by the Company' but did not provide other specific information about the facilities and services. It failed to make disclosures that allowed investors to understand the nature and scope of Welch's retirement benefits, including personal use of GE-owned aircraft, personal use of chauffeured limousines and home security systems and that in the first year of retirement Welch enjoyed $2.5 million in benefits. Hence GE violated the proxy solicitation and periodic reporting provisions of the 1934 Act. Other than the agreement by GE to cease and desist in the future, no other fine or penalty was referred to. It appears that if a company is sufficiently large and powerful, it may violate the Securities Laws without consequences, other than an agreement not to do so again. Is this a significant deterrent to corporate wrongdoing?

General Electric: 6 Corporate Crime Reporter 30(7), July 27, 1992. General Electric pled guilty to charges of defrauding the federal government of $26.5 million in the sale of military equipment to Israel. The company paid $69 million in fines, penalties and damages for committing the offenses. Of that, $9.5 million is a criminal fine. The company pled guilty to diverting millions of dollars to a former Israeli Air Force General to assist GE in securing favorable treatment in connection with the F-16 program.

Chevron: SEC Litigation Release No. 20363, November 14, 2007. The SEC filed a books and records and internal controls charge against Chevron for improper payments to Iraq under the U.N. Oil for Food Program. The charge alleged that third parties with which Chevron contracted paid approximately $20 million in illegal kickback payments in connection with Chevron's purchases of crude oil under the U.N. program. Chevron, "*without admitting or denying the allegations*", consented to the entry of a final judgment permanently enjoining future violations and requiring payment by Chevron of $30 million in disgorgement and civil penalties.

Chevron: DOJ For Immediate Release, December 23, 2009, states that Chevron agreed to pay the United States $45,569,584 to resolve claims that Chevron violated the False Claims Act by knowingly underpaying royalties owed on natural gas produced from federal and Indian leases. This settlement arose from a lawsuit filed under the whistleblower provisions of the False Claims Act. Because the DOJ joins in, but does not control, such litigation, whistleblower suits often are resolved without the customary DOJ settlement language "without admitting or denying."

Chevron: DOJ For Immediate Release, January 13, 2000 states that Chevron agreed to pay $95 million to resolve claims under the False Claims Act that Chevron and certain affiliated companies underpaid royalties due for oil and gas produced on federal and Indian leases since 1988.

AT&T: FTC For Release, September 10, 2004. The release describes a consent decree in which AT&T agreed to pay a $365,000 penalty for failing to notify certain applicants for telephone service of their rights under federal credit laws. The release discloses that AT&T placed conditions or restrictions on consumers' service without disclosing information required by law. The FTC release notes that *the consent decree does not constitute an admission by the defendant of a law violation.*

AT&T: DOJ For Immediate Release, February 13, 2009 states that AT&T Technical Services Corp. agreed to pay $8,266,414 to settle allegations that the corporation violated the False Claims Act, engaging in non-competitive bidding practices for E-rate contracts.

AT&T: DOJ For Immediate Release, January 14, 2009 states that AT&T agreed to pay over $2 million to settle charges of violation of two court orders entered in connection with AT&T's acquisition of Dobson Communications Corporation.

IBM: Litigation Release No. 21889, March 18, 2011. The SEC charged IBM with violating the books and records and internal control provisions of the Foreign Corrupt Practices Act due to improper cash payments, gifts and travel and entertainment to government officials in South Korea and China. The SEC alleged widespread payment of bribes by more than 100 employees of IBM subsidiaries, in exchange for which IBM received contracts for computer gear. *Without admitting or denying the allegations*, IBM consented to entry of a permanent injunction and agreed to pay disgorgement of $5,300,000, $2,700,000 in prejudgment interest and a $2,000,000 civil penalty.

IBM: Litigation Release No. 16839, December 21, 2000. The SEC settled a cease-and-desist proceeding against IBM involving alleged illicit payments to foreign officials by an IBM subsidiary. *Without admitting or denying the allegations*, IBM consented to entry of judgment requiring IBM to pay a $300,000 penalty. The order found that IBM-Argentina paid an Argentine company approximately $22 million, of which at least $4.5 million was transferred to several bank directors by the Argentine company. The order also found that former senior management of IBM-Argentina overrode IBM procurement and contracting procedures and hid the details of the subcontract from review personnel and that such personnel provided the procurement department with fabricated documentation.

IBM: POGO Federal Contractor Misconduct Database, May 30, 2008. IBM agreed to pay $20 million to settle a shareholders lawsuit claiming IBM misled the public about employee stock-option expenses in 2005. A year earlier, the SEC determined that IBM's conduct violated federal law, but did not amount to fraud.

Johnson & Johnson: SEC For Immediate Release 2011-87, April 7, 2011. Johnson & Johnson agreed to pay $70 million to settle cases brought by the SEC and criminal authorities. The SEC alleged J & J subsidiaries paid bribes to public doctors in Greece who selected J & J surgical implants, public doctors and hospital administrators in Poland who awarded contracts to J & J, and public doctors in Romania to prescribe J & J pharmaceutical products. J & J subsidiaries also allegedly paid kickbacks to Iraq to obtain contracts under the United Nations Oil for Food Program. J & J consented to the entry of the order *"without admitting or denying the SEC's allegations.*

Johnson & Johnson: PRN Newswire, August 30, 2012. A J & J subsidiary, Janssen Pharmaceuticals, agreed to pay approximately $181 million to resolve state consumer protection law claims in 36 states and the District of Columbia relating to promotional and marketing practices with respect to RESPERDAL. The terms of the settlement provided that *settlement was not an admission of wrongdoing.*

Johnson & Johnson: DOJ For Immediate Release, January 15, 2010. The DOJ filed a False Claims Act complaint against J & J and two of its subsidiaries alleging millions of dollars of kickbacks to Omnicare, Inc., the nation's largest pharmacy that specializes in dispensing drugs to nursing home patients. (Omnicare previously agreed to a $98 million penalty for its part in the offense, but the *settlement did not contain any admission of wrongdoing*.) The kickbacks were allegedly made to induce Omnicare to purchase and recommend J & J drugs, including RESPERDAL, for use in nursing homes. At this writing, this case has not been resolved.

Johnson & Johnson: One article has stated that, "after lengthy on-and-off negotiations, Johnson & Johnson has agreed to pay as much as $2.2 billion to settle various federal government probes into the marketing of the Resperdal antipsychotic, as well as other medications, Bloomberg News reports. Ed Silverman, June 11, 2012. A Value Line analyst report on Johnson & Johnson makes no mention of the numerous fines and penalties imposed on J & J or the huge Resperdal liability exposure but does conclude "This neutrally ranked, high-quality stock's 3- to 5-year total return potential should be particularly appealing to conservative investors." David R. Cohen, August 27, 2010.

Proctor & Gamble: Bloomberg, April 13, 2011. Proctor & Gamble and Unilever agreed to pay 312.2 million euros ($457 million) in fines to end a European Union probe into price fixing of laundry detergent. P&G, the maker of Ariel washing powder, was fined 211.2 million euros and Unilever will pay 104 million euros for agreeing with Henkel KGaA, the German maker of Persil, to fix prices of the detergent in eight countries over a three-year period… Henkel wasn't fined because it was the first company to supply evidence to regulators. Antitrust agencies across Europe have been investigating cosmetics and detergent manufacturers for agreements to fix or increase prices. The commission said it reduced fines on the other two companies because they cooperated in the probe and agreed to settle… Last year, Italy fined Unilever, P&G and 13 other companies for coordinating price increases for cosmetics.

Proctor & Gamble: Also in 2011, The French Autorite de la Concurrence "slapped fines totaling 361 million pounds ($484 million) on P&G, Henkel AG and Colgate-Palmolive Co. for colluding to set the price of soaps in France between 1997 and 2004." Wall Street Journal, December 9, 2011, Max Colchester and Christina Passariello. See, also, Business Courier, Dec.

8, 2011, Dan Monk. "Because it has the largest market share, P&G got the largest penalty, $312 million."

Proctor & Gamble: Settlement Agreement dated July 23, 2012 between the California Air Resources Board (ARB) and The Proctor & Gamble Distributing LLC. ARB alleged that from 2008 to 2011, P&G sold, supplied and offered for sale in California 2697 units of [hair styling products] subject to the volatile organic compound limit for such products containing concentrations of volatile organic compound exceeding the legal limits. P&G *denied any liability resulting from such allegations* but agreed not to sell any consumer products in California in violation of ARB regulations and also agreed to pay a penalty of $8,500. (While a minor violation, this is an example of federal permissive settlement ground rules being followed by a state regulatory agency.)

Pfizer: SEC Litigation Release No. 22438, August 8, 2012. The SEC on August 8, 2012 filed a settled enforcement action against Pfizer for violating the Foreign Corrupt Practices Act when its subsidiaries bribed doctors and other health care professionals employed by foreign governments in order to win business. Pfizer and its subsidiaries were found to have tried to conceal the bribery by improperly recording the transactions as legitimate expenses. The SEC filed a separate settled enforcement action against Wyeth, another pharmaceutical company previously acquired by Pfizer, for its Foreign Corrupt Practices Act violations. Pfizer and Wyeth agreed to pay approximately $45 million in disgorgement and prejudgment interest to the SEC. Another wholly-owned subsidiary of Pfizer will pay a $15 million penalty to settle similar charged brought by the DOJ under a deferred prosecution agreement. Under the Pfizer SEC complaint, once a doctor agreed to use Pfizer products, a percentage of the value purchased by a doctor's institution would be funneled back to the doctor. In settling the SEC's charges, *Wyeth neither admitted nor denied the allegations.*

Pfizer: New York Times, September 2, 2009. Gardiner Harris. Pfizer agreed to pay $2.3 billion to settle civil and criminal allegations that it had illegally marketed its painkiller Bextra. It was the largest health care fraud settlement and the largest criminal fine of any kind ever." This was Pfizer's fourth settlement over illegal marketing activities since 2002. While the government said the fine was a record sum, the $2.3 billion fine amounts to less than three weeks of Pfizer's sales. Under the agreement, Pfizer will plead guilty to violating the Food, Drug and Cosmetic act for its promotion of Bextra. A whistle blower formerly employed by Pfizer "helped prompt the government's Bextra case."

Pfizer: Washington Post, July 31, 2009, Joe Stephens. Pfizer signed a $75 million agreement with Nigerian authorities to settle criminal and civil charges that Pfizer illegally tested an experimental drug on children during a 1996 meningitis epidemic. Nigerian authorities say Pfizer's test killed 11 children and disabled scores more. Charges filed against Pfizer by Nigeria's federal government, which is seeking about $6 billion in damages, are unaffected by the above settlement. In a news release, Pfizer said that it *"specifically denies any wrongdoing".*

<u>Coca-Cola</u>: Reuters, July 6, 2008. Coca-Cola agreed to pay $137.5 million to settle a shareholder lawsuit that claimed the world's largest soft drink maker artificially inflated sales to boost its stock price, according to court documents. *Without admitting any wrongdoing*, Coca-Cola agreed to the settlement. Coca-Cola agreed to settle the case to avoid lengthy and uncertain litigation, the settlement said.

<u>Coca-Cola</u>: New York Times, November 17, 2000. "In the largest settlement ever in a racial discrimination case, the Coca-Cola Company agreed yesterday to resolve a federal lawsuit brought by black employees… The lawsuit…accused Coke of erecting a corporate hierarchy in which black employees were clustered at the bottom of the pay scale, averaging $26,000 a year less than white workers." Under the settlement*, Coke did not have to acknowledge a history of bias*. "In 1997, Coke's racial troubles drew the attention of the Labor Department [which] found that Coke had violated federal anti-discrimination laws and commanded the company to mend its ways."

<u>Coca-Cola</u>: SEC Release No. 8569, April 18, 2005. "Solely for the purpose of these proceedings…*and without admitting or denying the findings herein*, except as to the Commission's jurisdiction…Respondent (Coca-Cola) consents to the entry of this (cease and desist) Order…" The SEC found that at or near the end of each reporting period between 1997 and 1999 Coca-Cola implemented an undisclosed 'channel stuffing' practice in Japan known as 'gallon pushing' for the purpose of pulling sales from a future period into a current period. Japanese bottlers were offered extended credit terms to purchase beverage concentrate earlier than they otherwise would have. Coca-Cola was "basically robbing from their future earnings," said SEC lawyer Kit Addleman, according to Bloomberg. "There would have been no fraud had they made a disclosure of that practice." The SEC found that Coca-Cola issued a Form 8-k containing false and misleading statements. Coca-Cola agreed to remedial efforts but was not subjected to any fine. The order stated "the Commission has considered the remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff." It is interesting to note, however, that Coca-Cola was not the first to bring this practice to the attention of the SEC. According to a news release, "The SEC and DOJ probes stemmed from a lawsuit filed by Matthew Whitley, formerly the finance director for supply management in Coca-Cola's fountain division, who asserted he had been fired in retaliation for raising concerns about accounting fraud." CFO.com, Stephen Taub, April 19, 2005.

<u>J.P. Morgan Chase</u>: SEC For Immediate Release 2011-131, June 21, 2011. J.P. Morgan Chase will pay $153.6 million to settle SEC charges that it misled investors in a complex mortgage securities transaction. Under the settlement harmed investors will receive all of their money back. The complaint alleged that J.P. Morgan structured and marketed a synthetic collateralized debt obligation without informing investors that a hedge fund helped select the assets in the CDO and had a short position in more than half of those assets. J.P. Morgan failed to tell investors that a prominent hedge fund would financially profit from the failure of the CDO assets, selected in part by the hedge fund. J.P. Morgan Chase entered into the settlement *without admitting or denying the allegations*. See Wall Street Journal, June 21, 2011. According to the SEC complaint,…"the bank went on a hard-selling campaign as signs of strain in

the housing market made J.P. Morgan worried about its possible losses on Squared. Essentially, J.P. Morgan was looking for other investors to buy slices of the Squared CDO. In a March 2007 email cited in the SEC lawsuit, one European sales head at J.P. Morgan Securities told her troops that 'we really need your help on this one. This is a top priority from the top of the bank all the way down.'"

<u>J.P. Morgan Chase</u>: SEC For Immediate Release 2011-143, July 7, 2011. The SEC charged J.P. Morgan Chase with fraudulent bidding practices involving investment of municipal bond proceeds. J.P Morgan agreed to pay $228 million to settle the charges, *without admitting or denying the allegations*. J.P. Morgan improperly won bids by entering into secret arrangements with bidding agents to get an illegal 'last look' at competitors' bids. "Municipal issuers and investors didn't stand a chance against the fraudulent strategies JPMC and others used to guarantee profits" said the SEC Director of Enforcement. In a case of such outright fraud, why should the wrongdoer be permitted to settle without admitting the fraud? Clearly these settlements do not deter malfeasance because the same wrongdoers keep doing it again. See above.

<u>J.P. Morgan Chase</u>: SEC Litigation Release No. 18252, July 28, 2003. SEC charged J.P. Morgan Chase with aiding and abetting Enron Corp.'s securities fraud. J.P. Morgan Chase agreed to pay penalties and interest in the amount of $135 million, *without admitting or denying the allegations.*

<u>J.P. Morgan Chase</u>: Time Moneyland, February 8, 2012, Martha C. White. J.P. Morgan Chase is one step closer to a possible settlement of a class-action lawsuit brought against a number of banks over their so-called transaction-ordering practices. "We're pleased to have reached an agreement in principle," said a J.P. Morgan Chase spokesman, in which the bank has agreed to pay $110 million, settling customer claims that J. P. Morgan Chase charged excessive overdraft fees.

<u>J.P. Morgan Chase</u>: New York Times, February 3, 2012, Edward Wyatt. "J.P. Morgan…has settled six fraud cases in the last 13 years, including one with a $228 million settlement last summer, but it has obtained at least 22 waivers, in part by arguing that it has 'a strong record of compliance with securities laws'". These waivers permit firms to underwrite certain stock and bond sales and manage mutual fund portfolios. The grant of these waivers often is not mentioned in the SEC press release announcing the penalty and the settlement agreement.

<u>J.P. Morgan Chase</u>: The Wall Street Journal, August 26, 2011, Jamila Trindle. J.P. Morgan Chase agreed to pay $88.3 million to settle Treasury Department allegations that it violated U.S. sanction rules covering Cuba, Iran and other nations. "According to the Treasury, J.P. Morgan Chase processed $178.5 million worth of wire transfers involving sanctioned persons in Cuba during a three-month period in 2005 and 2006. The Treasury also alleged that the bank made a $2.9 million loan to facilitate a transaction for the Islamic Republic of Iran

Shipping Lines on Dec. 22, 2009." Treasury said the Cuban transfers and the Iran ship deal were "egregious because of reckless acts or omissions" by J.P. Morgan Chase.

J.P. Morgan Chase: The Wall Street Journal, June 23, 2011, Joseph Checkler. A judge approved a settlement that requires J.P. Morgan Chase to pay $861 million in cash and securities to customers of Lehman Brothers Holdings. *J.P. Morgan disagreed with some of the trustee's findings* but consented to turning over most of those funds in order to settle the dispute. [Courts, as well as federal regulatory agencies, sometimes allow wrongdoers to disclaim liability.]

J.P. Morgan Chase: Economonitor, May 11, 2012, Simon Johnson. "In the light of JP Morgan's stunning losses on derivatives, announced yesterday but with the full scope of total potential losses still not yet clear…, Jamie Dimon and his company do not look like any kind of appealing role model… The lessons from JP Morgan's losses are simple. Such banks have become too large and complex for management to control what is going on. The breakdown in internal governance is profound."

Merck: The Wall Street Journal, November 22, 2011, Brent Kendall. "Merck & Co. Inc will pay $950 million to settle criminal and civil charges that it illegally promoted the painkiller Vioxx, the Justice Department announced… The department said Merck *will plead guilty to a misdemeanor offense* and pay a $321.6 million criminal fine. The company is entering into a civil settlement in which it will pay $628 Million to resolve additional allegations regarding off-label marketing of Vioxx and false statements about the drug's cardiovascular safety, the department said… Merck agreed in 2007 to pay $4.85 billion to settle thousands of product-liability lawsuits alleging Vioxx caused heart attacks and other injuries." Does the conduct described above sound like a misdemeanor? How many billions of dollars of damage caused by fraudulent misrepresentations would be required to constitute a felony in the DOJ's eyes?

Merck: Department of Justice, For Immediate Release,December13, 2007. Merck agreed to resolve violations of federal and state water pollution control regulations arising from spills at pharmaceutical plant outside of Philadelphia. Merck will pay $10 million to put into place systems that will prevent future dangerous discharges and will spend approximately $9 million for extensive environmental projects.

Merck: One commentator on the Vioxx scandal, Blackherbals.com (Mike Adams) had this to say about the settlement agreed to by the Justice Department: "Why does Merck seem to have an unlimited 'get out of jail free' pass from the U.S. government? Even while it's arguing for immunity from public lawsuits, it seems Merck has already achieved a silent, practical immunity from U.S. government regulators and law enforcers… It is flatly unbelievable to me that a corporation engaged in such massive campaigns of deception and death could be allowed to continue conducting business as usual in the United States. Its far worse than what Enron engaged in… [W]ere talking about an ever-expanding collection of body bags, corruption, bribery, secret payoffs, science fraud and, in my opinion, crimes against humanity… When individuals commit fraud and engage in deceptive practices that result in the deaths of other people, we charge them with crimes: Involuntary manslaughter, negligent homicide or even murder. So why, then, does a powerful corporation get to go free for committing essentially the same crimes? In other words, shouldn't corporations be held to the same laws as the People?" Public company recidivism is patently commonplace in the U.S., as will be seen by an examination of these examples pertaining to the thirty Dow Industrial corporations.

Intel: United States v. Adobe Systems, Inc., Apple, Inc., Google, Inc., Intel Corporation, Intuit, Inc. and Pixar, U.S. District Court for District of Columbia, Case: 1:10—cv-01629, Date Filed: 03/18/2011. This case enjoined each defendant from entering into any agreement with any other person to in any way refrain from soliciting, cold calling, recruiting, or otherwise competing for employees of the other person. This case struck down agreements that prevented some of the largest tech companies in the world from poaching employees from each other. The court order contained the following language: *"Whereas this Final Judgment does not constitute any admission by the Defendants that the law has been violated*…" However, the conduct alleged by the Department of Justice was patently illegal.

Intel: Federal Trade Commission, For Release: June 8, 1998. The FTC charged that Intel, the world's largest manufacturer of microprocessors, used its monopoly power to cement its dominance over the microprocessor market. The FTC alleged that Intel illegally used its market power when it denied three of its customers continuing access to technical information necessary to develop computer systems based on Intel microprocessors, and took other steps to punish them for refusing to license key patents on Intel's terms. The complaint charges that Intel has unreasonably used its market power to cut off important customers who sought to protect their own patent rights in microprocessor and related technologies that rival Intel's technology. The FTC alleged that on at least three occasions, Intel has terminated or threatened to terminate its mutually beneficial relationships in a selective, targeted fashion to retaliate against the firms that sought to protect or assert patent rights in rival microprocessor technologies or that refused to license such rights to Intel. [FIND OUT HOW THIS CAME OUT.]

Intel: Simmtester.com. December 17, 2009. The FTC sued Intel, charging that the chip maker has for a decade illegally used its dominant market position to stifle competition and strengthen its monopoly. Intel responded that it has competed fairly and lawfully. Intel has been charged with anticompetitive behavior by other governments. Intel continues to appeal a record $l.58 billion fine levied by the European Commission in May. Last month, New York's attorney general filed a federal antitrust lawsuit against Intel, alleging that the company had violated state and federal anti-monopoly laws. Intel also agreed last month to pay AMD $1.25 billion to settle long-running antitrust litigation and patent disputes between the two companies. The FTC complaint charges that Intel used threats and rewards to prevent computer makers from marketing any machines with non-Intel computer chips. The complaint also alleged that there was a "dangerous probability that Intel's unfair methods of competition could allow it to extend its monopoly into the GPU chip markets." According to the complaint, Intel's anticompetitive tactics violate Section 5 of the FTC Act, which prohibits unfair methods of competition and deceptive acts and practices in commerce.

Intel: Gigabyte, August 5, 2010, Ryan Smith. In the FTC's words, the resulting settlement is "not punitive but rather remedial". FTC was not asking for a fine. The settlement is geared towards undoing the damages from Intel's past actions and/or preventing future damages by disallowing Intel from engaging in specific anti-competitive actions. "The only money that this will cost Intel is $10 million for a reimbursement fund to pay misled buyers of Intel's compilers and libraries, and another $2 million to pay for Technical Consultants to evaluate Intel's compliance over the next 10 years." See CNN Money, August 4, 2010, David Goldman. "Intel settles antitrust suit with wrist slap." Goldman states that analysts expect the agreement will do little to change the microchip marketplace. *"The chipmaking giant did not acknowledge any wrongdoing or even admit that the facts alleged by the regulator were true, and it settled without paying a fine.* The FTC does not have the authority to levy a financial penalty on a company abusing a monopoly position." The FTC charged Intel with paying other manufacturers rebates in exchange for promises not to use microchips manufactured by Intel's competitors. The alleged payments were substantial. An SEC investigation revealed that Intel's payments to Dell alone totaled $4.3 billion between 2003 and 2006. "Intel has now paid just over $2.7 billion in settlements and fines for using its dominant market position to bully chip customers into exclusively buying its products. The European Union's Intel probe culminated in a record $1.45 billion fine, levied in May 2009… In November, Intel inked a peace treaty with AMD. The world's largest chipmaker paid its rival $1.25 billion and agreed to abide by 'a set of business practice provisions'. In return, AMD dropped all three of its pending lawsuits against Intel."

Intel: CNET News, January 10, 2011, Brooke Crothers. "Intel to pay Nvidia $1.5 billion in licensing fees. In addition to the six-year agreement involving licensing fees, the two companies have agreed to drop all outstanding legal disputes between them."

Verizon: Verizon Wireless Broadband, July 10, 2008, Karl Bode. "Verizon has agreed to settle a class action lawsuit for its early termination fees for $21 million, according to PC Magazine. The company potentially could have paid much more if they lost the case, given the 70 million participants were demanding refunds up to $1 billion. *Verizon Wireless admitted no wrongdoing, and a spokesman says the case was 'a distraction to our business, and we wanted to get it settled.'"*

Verizon: New York Times, October 28, 2010, Edward Wyatt. Verizon will pay $25 million to settle complaints that it levied unauthorized data fees on 15 million customers, the FCC announced. Under a consent decree with the FCC, the company company will also pay a minimum of $52.8 million in refunds. The investigation found that the improper charges originated when applications or software built into a phone automatically accessed the Internet, when customers were billed for access to links that were supposed to be free of charge, or in similar circumstances. In addition to the $25 million payment to the Treasury, Verizon agreed to cease charging the incorrect fees and to create a task force to monitor and resolve future complaints. The FCC consent decree (File No. EB-09-TC-458) specifically provided that it *"does not constitute either an adjudication on the merits, or a factual or legal finding or determination regarding any compliance or noncompliance with, or applicability of,* *the Act or the Rules*." Here the FCC is doing what is customarily done by the DOJ and SEC in enforcement proceedings, thereby allowing the wrongdoer to take the position that it is blameless but consented to avoid the expense and inconvenience of litigation, or some other spurious excuse. This practice prevents investment analysts from conclusively establishing that misconduct by the party charged occurred.

Verizon: DOJ For Immediate Release, August 16, 2012. The DOJ announced that it will require Verizon and four of the nation's largest cable companies to make changes to a series of agreements concerning both the sale of bundled wireless and wireline services, and the formation of a technology research joint venture. The department said that, if left unaltered, the agreements would have harmed competition by diminishing the companies' incentive to compete, resulting in higher prices and lower quality for customers. *The release made no mention of any fines or penalties imposed*. Since no formal charges had been made by DOJ, the customary disclaimer of admission of wrongdoing was not necessary.

Verizon: New York Times, October 3, 2010, Edward Wyatt. Verizon will pay up to $90 million in refunds to 15 million cellphone customers who were wrongly charged for data sessions or Internet use. This is one of the largest customer refunds by a telecommunications company. In the last three years, the FCC has received hundreds of complaints from Verizon Wireless customers who said they were charged for data use or Web access at times when their phones were not in use. Customers who contacted Verizon about the charges said that the company had often refused to reverse the charges or discouraged them from blocking the data service on their phones. The FCC began a formal investigation into the unauthorized charges in January. "Formal FCC investigations, in which the agency can seek sworn testimony, are usually not disclosed publicly," according to the author. An October 5, 2010 New York Times editorial commenting on the above, stated: "The lesson Congress should take from this incident is that the telecommunications networks are too vital to leave to industry self-regulation."

Verizon: Sun, August 26, 2012. Posted by lgonzalez. In December, 2010, Verizon Wireless began operating its network via C-Block spectrum with licenses it acquired in the 2008 auction. In keeping with net neutrality rules unique to C-Block usage, Verizon agreed that it would not block or limit consumers' ability to tether on their 4G LTE network. Tethering allows a consumer to use a device, such as a smartphone, as a modem to funnel Internet access to an additional device. On July 31, the FCC agreed to end an investigation into whether or not Verizon Wireless had violated this rule. In exchange, Verizon wireless would make a $1.25 million 'voluntary contribution' ." The FCC consent decree requires the practice cease and that Verizon Wireless implement policies to curtail the behavior. Free Press Policy Director Matt Wood said: "Today's action makes it clear that Verizon was flaunting its obligations as a spectrum-license holder and engaging in anti-competitive behavior that harmed consumers and innovation."

Wal-Mart: 10 Great Moments in Corporate Malfeasance, by Josh Clark. "In 2004, it came out that not all Wal-Mart's 1 million employees were legal residents of the United States and that many of the most vulnerable of the company's employees were being mistreated by the corporation. Between 1998 and 2003, more than 350 undocumented workers were arrested during their shifts at Wal-Mart stores; officials caught 250 of them in a single-night 21-state dragnet. In a lawsuit filed by workers, the company was charged with forcing janitors to work seven-day-weeks for pay as low as $325 a week. The night shift janitorial staff was particularly mistreated in stores across the U.S. In 2004, the New York Times documented a 'lock-in' policy that required that cleaning staff be locked in the store—without an exit—to prevent shrinkage and cigarette breaks. The company maintained that a manager with a key was always on hand, but this proved false in some cases. One worker who broke a foot had to wait four hours for a manager to arrive and unlock the door so that he could leave to receive medical treatment; another worker had a similar experience, having to wait until the morning shift arrived to go to the hospital after cutting her hand with box cutters."

Wal-Mart: Huff Post, July 23, 2009, Al Norman. Wal-Mart has agreed to pay up to $35 million to a class of its employees in Washington State who sued the company for denying them rest breaks and meal breaks, and for forcing them to work off the clock, which is illegal. "The Washington case was just a small piece of the total suits settled, leaving Wal-Mart with a bill of at least $352 million, and possibly as high as $640 million, according to a press release issued last Christmas." The settlement agreement included the following: *"Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Wal-Mart, and Wal-Mart denies liability therefor."*

Wal-Mart: Arkansas Business, July 28, 2008, Mark Friedman. "Walmart's own audit documented constant violation of labor laws. … The Shipley Audit: In 1999, a judge in Las Animas County District Court in Colorado approved class certification for Colorado Wal-Mart workers who charged they weren't getting paid for rest and meal breaks. To see if employees were missing breaks, managers commissioned an audit, which would come to be called the Shipley Audit… In June 2000, Wal-Mart's auditors issued its findings: 'Wal-Mart may face several adverse consequences as a result of staffing and scheduling not being prepared appropriately" the report said. Wal-Mart's policy was to provide for two 15-minute paid rest breaks for every six hours worked. Wal-Mart's contract provided for an unpaid 30-minute meal break for every six hours worked. Labor laws on work break time vary in each state, but most states require employees to receive a lunch break if they work more than seven hours a day. Auditors found violations in 127 out of 128 stores studied during a one-week period, listing 15,705 'too few meals' and 60,767 'too few breaks'. The Shipley Audit also found extensive violations of child-labor laws.   More than 50 members of Wal-Mart's senior management team in Bentonville received the report, including Wal-Mart's then president…and a senior member of Wal-Mart's Human Resources Department and Policy Committee… 'Rather than addressing the audit methodology or the results, Wal-Mart's executives chose to ignore the results, based,at least partially, on the rationale that exception reports were not accurate, and therefore the audits must be flawed'… Wal-Mart downplayed the importance of the Shipley Audit and said the auditors failed to interview employees to find out the reasons for the missed breaks." In 2004, the Colorado wage-and-hour lawsuit settled for $50 million, published reports said. In 2006, Wal-Mart faced another jury in Philadelphia, where Wal-Mart employees also said they weren't paid for their breaks. While the jury found in favor of Wal-Mart on the meal-period claims, the jury found the employees worked off the clock and missed rest breaks. The jury awarded the workers $78 million for back pay. The judge increased the judgment to $188 million to cover the costs of other damages and court costs and attorneys' fees. Wal-Mart has appealed. See also New York Times, January 13, 2004, Steven Greenhouse, which states that "an internal audit now under court seal warned top executives at Wal-Mart stores three years ago that employee records at 128 stores pointed to extensive violations of child-labor laws and state regulations requiring time for breaks and meals."

Wal-Mart: New York Times, April 21, 2012, David Barstow. The Times reported how Wal-Mart de Mexico orchestrated a campaign of bribery to win market dominance. It paid bribes to obtain permits "in virtually every corner of the country". Wal-Mart investigators found evidence of widespread bribery, including a paper trail of suspect payments totaling more than $24 million. "Wal-Mart de Mexico's top executives not only knew about the payments, but had taken steps to conceal them from Wal-Mart's headquarters… The lead investigator recommended that Wal-Mart expand the investigation. Instead…Wal-Mart's leaders shut it down. Neither American nor Mexican law enforcement officials were notified. None of Wal-Mart de Mexico's leaders were disciplined. Indeed, its chief executive, Eduardo Castro-Wright, identified by the former [Wal-Mart] executive as the driving force behind years of bribery, was promoted to vice chairman of Wal-Mart in 2008… [T]op Wal-Mart executives focused more on damage control than on rooting out wrongdoing… Primary responsibility for the [internal] investigation was then given to the general counsel of Wal-Mart de Mexico—a remarkable choice since the same general counsel was alleged to have authorized bribes… " After the Times article, Wal-Mart informed the Justice Department that it had begun an internal investigation into possible violations of the Foreign Corrupt Practices Act. "Credible evidence that bribery played a persistent and significant role in Wal-Mart's rapid growth in Mexico…making it the country's largest private employer." Sergio Cicero Zapata, who resigned from Wal-Mart in 2004 after years in the company's real estate department, recounted years of payoffs. "They targeted mayors and city council members…anyone with the power to thwart Wal-Mart's growth. The bribes, he said, bought zoning approvals, reductions in environmental impact fees and the allegiance of neighborhood leaders." The more the investigators corroborated Cicero's assertions, the more resistance they encountered inside Wal-Mart. "Wal-Mart's leaders found a bloodlessly bureaucratic way to bury the matter. But in handing the investigation off to one of its main targets, they disregarded the advice of one of Wal-Mart's top lawyers… 'The wisdom of assigning any investigative role to management of the business unit being investigated escapes me,' …then general counsel of Wal-Mart International, wrote… A confidential investigation, conducted for Wal-Mart by Kroll Inc., a leading investigation firm, discovered that Wal-Mart de Mexico had systematically increased its sales by helping favored high-volume customers evade sales taxes… A draft of Kroll's report…concluded that top Wal-Mart de Mexico executives had failed to enforce their own anticorruption policies, ignored internal audits that raised red flags and even disregarded local press accounts asserting that Wal-Mart de Mexico was 'carrying out a tax fraud'." Willkie Farr, one of Wal-Mart's firms of attorneys, recommended an independent, "spare-no-expense" investigation. Instead, Wal-Mart's leaders rejected this approach and decided Wal-Mart's lawyers would supervise a more limited inquiry by in-house investigators.

Wal-Mart: Forbes, April 22, 2012, Nathan Vardi. Discussing the Wal-Mart de Mexico bribery scandal, Mr. Vardi states: "[T]he Justice Department has promoted a custom in corporate America where companies are encouraged to self-report potential FCPA violations to the feds immediately upon learning about them in order to obtain leniency… The companies almost always come to settlement agreements after they self-disclose… Wal-Mart… has allegedly rolled the dice and not self-reported allegations that were made. Now, those allegations are on the front page of the New York Times. Worse still, the man who the New York Times describes as being 'the driving force behind systematic bribery in Mexico', Eduardo Castro-Wright, is now vice-chairman of Wal-Mart… J. Lee Scott Jr., Wal-Mart's CEO in 2005, reportedly 'rebuked internal investigators for being overly aggressive.' Mike Duke, Wal-Mart's current chief executive, headed Wal-Mart International in 2005 and was 'kept informed' about the internal investigation into the bribery allegations."

Wal-Mart: Morningstar, April 23, 2012. In one of the rare instances in which an investment analyst report mentions alleged corporate wrongdoing, Morningstar reported "[W]e believe it's necessary to inform investors that current vice chairman Eduardo Castro-Wright was chief executive of Wal-Mart de Mexico until early 2005… The operations in Mexico were touted by the company to investors as the model for growth abroad. However, given the Wal-Mart de Mexico developments, … we believe the considerable investor base that owns Wal-Mart shares for its international growth could begin to question those prospects… If the company begins to report U.S. comparable-store sales ahead of our and consensus forecast, the stock will more than regain lost ground stemming from operating practices in Mexico. We are not changing our $6l fair value estimate." Michael Keara.

McDonalds: FTC Complaint 21600, August 23, 2012. Five separate Federal Trade Commission complaints were filed by child advocacy groups against McDonalds and four other companies for collecting children's email addresses without parental consent. Enacted in 1998, the Children's Online Privacy Protection Act prohibits the collection of minor's personal information (including email addresses) by any party without parental notification.

McDonalds: A Study in Corporate Irresponsibility: McDonald's Corporation's Operations at LAX, LA Alliance for a New Economy, May 202. The "Executive Summary" states that McDonalds has attempted to avoid paying $843,742 in profit-sharing fees that a LAWA audit determined were owed to the Airport and changed ownership of two of its restaurants without seeking the required approval from the Board of Airport Commissioners. McDonalds' position on these issues was not disclosed.

No SEC, DOJ or other egregious law violations were found. McDonalds appears to be one of the few massive public corporations with effective corporate governance.

Disney: SEC Release No. 5088, December 20, 2004. On December 20, 2004, the SEC settled enforcement proceedings against Disney. Disney was charged with failing to disclose a related party transaction between the corporation and its directors and failing to disclose certain compensation paid to a Disney director. Further, Disney failed to disclose that it made regular payments to a corporation owned by a Disney director that provided air transportation to that director for Disney-related business purposes. Disney also failed to disclose that it provided office space, secretarial services, a leased car and a driver to another Disney director, services valued at over $200,000 annually. Disney consented to the issuance of a cease and desist order*, without admitting or denying the findings*. A summary of this proceeding published by an SEC staff member failed to mention that Disney consented without admitting or denying the findings. No monetary penalty was assessed.

Disney: Hunton & Williams LLP, May 13, 2011. On May 12, 2011, the Federal Trade Commission announced that Playdom, Inc., a Disney subsidiary, has agreed to pay $3 million to settle charges that the company violated Section 5 of the FTC Act and the Children's Online Privacy Protection Rule ("COPPA Rule") "by illegally collecting and disclosing personal information from hundreds of thousands of children under age 13 without their parents' prior consent." This settlement marks the largest civil penalty imposed for an FTC COPPA Rule violation. The FTC alleged that in over 1.2 million instances, defendants collected, used or disclosed the personal information of children in violation of the COPPA Rule. It does not appear that this consent decree contained any stipulation that defendants entered into the settlement "without admitting or denying" the FTC charges. Perhaps the SEC and DOJ should take note of how the FTC handled this settlement of corporate wrongdoing.

Disney: Corporatecrime.wordpress.com. Nov. 19, 2009. "Yesterday the California Attorney General announced his demand for product recalls of seven toys and children's products found with high levels of lead in violation of state and federal safety laws. A Disney 'Tiny Tink and Friends' necklace set for young children contained 22,000 parts per million (ppm) of lead, more than 73 times higher than the federal safety standard." In a statement on their cheap, lead-tainted necklace, Disney claims that tests showed their product complies with state and federal lead rules.

Disney: DOJ For Immediate Release, Sept. 24, 2010. DOJ announced a settlement with six high technology companies, Apple, Google, Intel, Intuit and Pixar, that prevents them from entering into no solicitation agreements for employees. According to the complaint, the six companies entered into agreements that restrained competition between them for highly skilled employees, preventing the companies from directly soliciting each other's employees. The agreements allegedly were formed and actively managed by senior executives of these companies. Pixar, at the time of this proceeding, was a wholly-owned subsidiary of Disney although the SEC release failed to mention this fact, that could be material to investors deciding whether to purchase Disney stock. In addition*, none of the wrongdoers had to admit wrongdoing or pay any fine, notwithstanding the allegation that the agreements were actively managed by senior executives*. This can only reinforce frequent other SEC precedents for not charging members of senior management for the wrongdoing of their companies when they had advance knowledge of it or, in this case, directly participated in the wrongdoing. Who sets these policies at the SEC?

Disney: In a November 9, 2012, Value Line analysis, Orly Seidman comments "these top-quality shares are favorably ranked for the year ahead." No mention is made of any of Disney's derelictions, but an analyst can not be expected to take such a risk when the SEC and DOJ settle corporate misconduct cases without an admission of wrongdoing. If an analyst did so, the company's response would be that it simply wished to avoid the expense of litigation.

Cisco: DOJ For Immediate Release, September 7, 2010. "Cisco Systems and Westcom Group North America (formerly d.b.a. Comstor) have agreed to pay the United States $48 million to settle claims that they made misrepresentations to the General Services Administration (GSA) and other federal agencies in violation of the False Claims Act, the Justice Department announced today." [check DOJ website when it becomes available, to see whether any disclaimer of admission of wrongdoing]

Cisco: Written Testimony of Morton Sklar submitted to Subcommittee on Human Rights and The Law of the Judiciary Committee of the U.S. Senate, hearing on March 2, 2010. "[I]n direct violation of U.S. laws, and fed by the profit motive, Yahoo, Cisco Systems and many other U.S. companies have provided significant support and assistance that has facilitated major human rights Internet abuses in China, and in other repressive regimes such as *Iran….* Cisco Systems…marketed and sold Internet routers to Chinese law enforcement agencies with the articulated purpose of helping Chinese officials identify, arrest and persecute political dissidents and religious minorities (Falun Gong practitioners in particular) in violation of U.S. export control laws… Cisco has consistently claimed that these are 'off the shelf' products that could be purchased elsewhere, and that they are 'dual use,' or 'neutral products that are not necessarily geared to prohibited uses under U.S. law… [C]isco had ample reason to know that Chinese law enforcement agencies were engaging in Internet monitoring activities on a massive scale, and that the sale of these products and technologies could easily be misused to facilitate exactly the type of Internet monitoring and human rights abuses that U.S. laws and policies condemned… [Mr. Chandler, Cisco's general counsel] did not deny that Cisco knew that one purpose of the Chinese Government's …project of Internet monitoring was to combat Falun Gong and other religious and political dissidents… *Finally, Chandler suggested that Cisco was too large, and conducted too much overseas business to properly monitor the behavior of all its foreign-based employees and affiliates with regard to any support they gave foreign governments in their acts of repression…"*

Cisco: The CorpWatch website lists numerous articles addressing the issue of possible tailoring by Cisco of its technology for the Chinese government to monitor and apprehend members of banned groups.

Cisco: Forbes.com, Cisco's Backdoor for Hackers, Andy Greenberg, Feb. 3, 2010. An IBM researcher "unveiled research on how easily the 'lawful intercept' function in Cisco's IOS operating system can be exploited by cybercriminals or cyberspies to pull data out of the routers belonging to an internet service provider…and watch innocent victims' online behavior. We need to balance privacy interests with the state's interest in monitoring suspected criminals… " But the IBM researcher also stated: "Cisco, in fact, is the only networking company that follows the recommendations of the Internet Engineering Task Force standards body and makes its lawful intercept aerchitecture public, exposing it to peer review and security scrutiny. The other companies keep theirs in the dark, and they likely suffer from the same security flaws or worse."

Cisco: SFGate, Dec. 7, 2012. "A human rights group that brought suit against Cisco Systems last year accusing it of abetting the torture of Falum Gong practitioners in China says it has additional evidence the networking giant customized its products to help the government monitor members of the spiritual movement… The legal question is whether Cisco or its executives can be held liable for how its products were used, if they were aware of the Chinese government's intentions and made specific customizations to further those goals. The suit was brought under the Torture Victim Protection Act and Alien Tort Statute, which allows U.S. courts to hear civil actions brought by foreign citizens…The Human Rights Law Foundation of Washington, D.C. filed the suit on behalf of 11 individuals… Cisco vehemently denies the charges." Cisco says: "There is no basis for these allegations against Cisco, and we intend to vigorously defend against them… Cisco does not operate networks in China or elsewhere, nor does Cisco customize our products in any way that would facilitate censorship or repression."

This poses a difficult question. Clearly Cisco senior management has known for some time of the uses to which their technology has been put by the Chinese. It does not appear to this writer that the maker of an off-the-shelf item designed for legal uses should be held responsible for the misuse of that item by the vendee for illegal purposes. If the vendor modified the off-the-shelf item specifically to facilitate the illegal use thereof, a different question is presented. The outcome of the pending Falun Gong litigation may shed light on the question of the propriety of Cisco's corporate governance in this instance.

3M: National Law Review, August 22, 2011. "3M agreed to pay $3million to a class of former employees and implement preventive measures to resolve a nationwide age discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today." The suit charged that 3M unlawfully laid off hundreds of employees over the age of 45 during a series of reductions in force from July 2003 through Dec. 2006. 3M will pay $3 million in monetary relief to approximately 290 former employees. This amounts to only approximately $10,344 per improperly discharged employee. Is this the true value of an average 45 year old employee's job at 3M? Furthermore, a March 19, 2011 Associated Press article about the settlement discloses that the "*settlement was not an admission of liability*." It is interesting to note that the EEOC website provides no means of access to the settlement agreement, other than a freedom of information request.

3M: For Immediate Release, Department of Justice, February 7, 2002. The DOJ announced a settlement under which 3M will pay $15.5 million for government cleanup work at an Ohio site. 3M, along with a number of other defendants, was originally sued in 1997 under the Superfund law. Wastes disposed of from a 3M printing operation in Cleveland allegedly included "thousands of drums of discarded inks, solvents and photographic emulsions, along with other wastes containing hazardous substances." Prior to the settlement agreement, a US

District Court ruled that 3M was jointly and severally liable under the Superfund law for the cost of cleaning up the site. *The DOJ press release does not disclose whether 3M admitted liability or whether a statement was included in the agreement to the effect that 3M neither admits nor denies liability*. The DOJ website does not disclose how to obtain the text of such settlement agreements. Telephone requests have not been answered but a DOJ Freedom of Information Officer helpfully supplied an excerpt from one non-public settlement agreement containing the *neither admit nor deny* verbiage..

<u>3M</u>: World Watch, February 22, 2013. 3M announced this week that the SEC and DOJ informed the company in January that both agencies would drop their Foreign Corrupt Practices Act bribery investigations, begun in 2009, without taking any actions. "According to 3m, as reasons for their decision to drop the investigation, the SEC and DOJ cited 3M's voluntary disclosure, its cooperation throughout the investigation and its efforts to enhance its compliance program." *There was no mention of any absence of evidence of law violation. The DOJ did not issue a press release in January, 2013 announcing the discontinuance of its FCPA investigation.*

<u>3M</u>: Environmental Protection Agency Cases and Settlements, April 25, 2006. "EPA and the 3M Company reached a $1.5 million settlement to resolve reporting violations under the Toxics Substances Control Act (TSCA)…that the company voluntarily disclosed to EPA… 3M voluntarily disclosed all of the violations covered by this settlement under the terms of a TSCA corporate-wide audit agreement. Under the terms of the settlement*, 3M neither admitted nor denied that it had violated TSCA and EPA made no substantive determination in all but 10 instances." Hence, the Environmental Protection Agency joins the ranks of federal regulatory agencies that settle wrongdoing charges without requiring an admission of wrongdoing by the defendant.*

<u>Alcoa</u>: The American Lawyer, October 10, 2012, Jan Wolfe. "Alcoa announced Tuesday that it would pay Aluminium Bahrain BSC (Alba) $85 million in cash to settle civil claims under the Racketeer Influenced and Corrupt Organizations Act. Alcoa also said it will resume a long-running agreement to supply Alba with raw aluminum materials… Alba valued that portion of Tuesday's deal at $362 million. *Alcoa…will not admit any wrongdoing*." Alba brought suit in 2008 alleging that a bribery scheme perpetuated by Alcoa officials and a billionaire businessman named Victor Dahdaleh had cost it more than $400 million. Alba claimed that Dahdaleh and a group of Alcoa officials paid more than $9 million in bribes to Alba employees and Bahraini officials. The bribes allegedly caused Alba to overpay for materials. After Alba filed suit, the DOJ launched a criminal investigation into the alleged bribery. [T]he DOJ's ongoing investigation has yet to lead to any charges. US counsel for Alba asserted that they "beat [federal] prosecutors to the punch yet again."

<u>Alcoa</u>: Lancaster Online, August 2,2011, Tim Mekeel. "Alcoa Mill Products [an Alcoa subsidiary] will pay $540,000 to settle federal allegations of discrimination against minority and women job seekers." *In the settlement with the Department of Labor, Alcoa does not admit any wrongdoing.*

<u>Alcoa</u>: For Immediate Release, December 10, 2004, Department of Justice. "The Department of Justice, U.S. Environmental Protection Agency, National Oceanic and Atmospheric Administration, Department of the Interior, Texas Attorney General's Office, Texas Commission on Environmental Quality, and the Texas Parks and Wildlife Department today announced two settlement agreements with Alcoa Inc. and Alcoa World Alumina L.L.C. that address mercury-contaminated sediments in Lavaca Bay, ongoing unpermitted discharges of mercury into Lavaca Bay, and soil contamination…" Under the agreement, Alcoa will undertake a variety of restoration actions to compensate for natural resource losses resulting from the site's contamination. Alcoa has already spent approximately $40 million conducting early response actions and will spend approximately $11.4 million to complete remaining cleanup actions. "For several years during its period of ownership, Alcoa operated a chlorine-alkali processing unit at the plant and discharged wastewater containing mercury into Lavaca Bay." *The DOJ press release did not disclose whether or not the settlement required Alcoa to admit liability.*

<u>Alcoa</u>: U.S. Water News Online, February 2002. "Alcoa will pay $550,000 to settle a federal lawsuit alleging the aluminum maker's aerospace products plant violated water pollution limits. Under the agreement, … *Alcoa admits no wrongdoing* and avoids a trial over the 1999 complaint filed by the U.S. Environmental Protection Agency. " In addition, the settlement requires Alcoa to make a study {of the affected site] to determine the sources of PCBs in the waterways; continue efforts to eliminate discharges into[the affected sited]; comply with pollution permits; and limit the Alcoa plant's water usage.

<u>Alcoa</u>: Environmental Protection Agency April 9, 2003 press release. The DOJ and EPA announced a major Clean Air Act settlement with Alcoa, "under which the company will likely spend over $330 million to install state-of-the-art pollution controls to eliminate the vast majority of sulfur dioxide and nitrogen oxide emissions from the power plant at Alcoa's aluminum production facility in Rockdale, Texas." *The release does not disclose whether the settlement agreement required Alcoa to admit the alleged law violations*. [Settlement agreements with corporate wrongdoers are not available on the DOJ website. To obtain them, a Freedom of Information request is required.] However, it appears unlikely that a settlement costing $330 million would have been entered into by a blameless defendant solely to avoid the cost of litigation.

<u>Alcoa</u>: For Immediate Release, Department of Justice, March 13, 2000. Alcoa has agreed to pay $8.8 million as part of a Clean Water Act and Clean Air Act settlement with DOJ and EPA. The case, relating to an Indiana Alcoa facility, is part of a federal effort to help clean up the Mississippi River and its basin. The suit alleged that Alcoa violated multiple requirements of its Clean Water Act permit regulating discharges to the Ohio River. The settlement requires fundamental changes in the way Alcoa operates its Indiana facility. *The release does not disclose whether Alcoa admitted the alleged wrongdoing.*

American Express: Board of Governors of the Federal Reserve System, Docket Nos. 12-066-B-HC, 12-066-CMP-HC, Consent Order and Order of Assessment of a Civil Money Penalty Issued Upon Consent…October 1, 2012. FDIC and CFPB made findings that Centurion (an American Express subsidiary) engaged in practices that resulted in violations of federal consumer financial laws. *Centurion neither admitted nor denied the findings*. CFPB made findings that FSB (an American Express subsidiary) engaged in practices that resulted in violations of federal consumer financial laws and failed to manage its compliance with federal consumer financial laws and regulations adequately, *which FSB neither admitted nor denied*. OCC made findings that FSB engaged in practices that resulted in violations of the FTC Act. *FSB neither admitted nor denied the findings*. The Board of Governors assessed Amex and TRS a joint civil money penalty of $9 million. Amex agrees to submit to the Reserve Bank a plan to enhance the firmwide compliance risk management program with respect to compliance with all consumer protection laws, rules, and regulations. The Reserve Bank may, in its sole discretion, grant written extensions of time to Amex or TRS to comply with provisions of this order. The order contained no information about the nature or extent of the harm to consumers caused by the illegal activities of Amex and its subsidiaries. Reuters, October 1, 2012, American Express Co. Business News, stated with respect to the above described settlement that "Three American Express subsidiaries will refund $85 million to customers to resolve charges that they broke consumer protection laws… The subsidiaries charged illegal late fees, treated applicants differently based on age, misled consumers about debt collection and commit[ed] other violations, the U.S. Consumer Financial Protection Bureau said. In addition to the refund to about 250,000 customers, American Express will pay civil penalties totaling $27.5 million to the CFPB, Federal Deposit Insurance Corp, the Federal Reserve and the Office of the Comptroller of the currency." According to Bloomberg Businessweek, Carter Dougherty and Jesse Hamilton, October 1, 2012, *"American Express neither admitted nor denied regulators' accusations…"*

American Express: Board of Governors of the Federal Reserve System Financial Crimes Enforcement Network, For Immediate Release August 6, 2007. The Board of Governors and the Financial Crimes Enforcement Network jointly announced the assessment of $20 million in civil money penalties against American Express Bank International (an American Express subsidiary) for violations of the Bank Secrecy Act. In addition, the Financial Crimes Enforcement Network announced a separate $5 million civil money penalty against American Express Travel Related Services Company (another American Express subsidiary) for its violations of the Bank Secrecy Act. In a related matter, the Department of Justice announced the execution of a deferred prosecution agreement with American Express Bank International in connection with charges that the company failed to maintain an anti-money laundering program. The company will forfeit $55 million to the United States to settle the Department's forfeiture claims. The two American Express subsidiaries entered into a cease and desist order with respect to the charges, *without admitting any of the allegations*.

American Express: Securities and Exchange Commission Administrative Proceeding File No. 3-12115, December 1, 2005. American Express Financial Advisors Inc. (now Ameriprise Financial Services, Inc. ("AEFA")) agreed to an Offer of Settlement, *without admitting or* *denying the findings except as to jurisdiction*. The cease and desist order implementing the settlement contained multiple allegations of law violations and ordered AEFA to pay disgorgement of $15 million and a civil penalty of $15 million.

Bank of America, January 7, 2013: Wall Street Journal, Timiraos and Berthelsen. "Bank of America Corp. reached an $11.6 billion settlement with mortgage-finance giant Fannie Mae to settle a long-running standoff over nearly a decade's worth of home loans, the bank's latest bid to resolve its biggest hangover from the acquisition of Countrywide Financial Corp. five years ago." The article made no mention of whether Bank of America made any admission of wrongdoing in the settlement agreement.

Bank of America, January 7, 2013: Bank of America agreed to pay $2.9 billion as part of an $8.5 billion settlement that ten banks reached with federal regulators over allegations of foreclosure abuses. The amended consent order entered into by Bank of America with the Comptroller of the Currency contained a statement that "the Bank, *without admitting or denying any wrongdoing*, consents and agrees to issuance of the Amendment to the Consent Order by the Comptroller."

Bank of America, Sept. 28, 2012: The Wall Street Journal, Sept. 28, 2012, BofA Takes New Crisis-Era Hit, Fitzpatrick, Berthelsen, and Sidel. "The payment [$2.43 billion]…ranks as the eighth-largest securities class-action settlement… *BofA denies the allegations* and said it agreed to the pact as a way of eliminating the uncertainty of protracted litigation."

Bank of America, February 2012: Department of Justice, For Immediate Release, February 9, 2012. "U.S. Attorney General Eric Holder…announced today that the federal government and 49 state attorneys general have reached a landmark $25 billion agreement with the nation's five largest mortgage servicers to address mortgage loan servicing and foreclosure abuses… The joint federal-state agreement requires servicers to implement comprehensive new mortgage loan servicing standards and to commit $25 billion to resolve violations of state and federal law. These violations include servicers' use of 'robo-signed' affidavits in foreclosure proceedings; deceptive practices in the offering of loan modifications; failures to offer non-foreclosure alternatives before foreclosing on borrowers with federally insured mortgages; and filing improper documentation in federal bankruptcy court. An excerpt from the settlement agreement provided by the DOJ under the Freedom of Information Act reveals that Bank of America signed the agreement *without admitting or denying the findings*, other than those relating to jurisdiction. $11.8 billion was the responsibility of Bank of America. Deal Journal, January 7, 2013, Bank of America's Settlement Tally: An Update.

Bank of America: CNN Money Dec. 21, 2011, BofA settles unfair lending claims for $335 million. "The Justice Department announced a $335 million settlement with Bank of America Wednesday over discriminatory lending practice at Countrywide Financial. Attorney General Eric Holder said a federal probe found discrimination against at least 200,000 qualified African American and Latino borrowers from 2004 to 2008… These borrowers paid on average tens of thousands of dollars more in interest and were subject to pre-payment penalties." Bank of

America issued a statement saying the discriminatory practices took place at Countrywide before it was purchased by Bank of America.

Bank of America: Bloomberg, June 29, 2011, Hugh Son. Bank of America agreed to pay $8.5 billion to resolve claims made by bondholders over soured mortgages. Investors, including the Federal Reserve Bank of NY demanded that Bank of America repurchase home loans that had been packaged into bonds by Countrywide, which was acquired by Bank of America in 2008. This proposed settlement has been opposed by certain investors and is now scheduled to be considered for court approval in May, 2013.

Bank of America: May 26, 2011, Mortgage Companies Settle Suits on Military Foreclosures, Diana B. Henriques. The DOJ announced that it had simultaneously filed and settled a lawsuit against a Countrywide, a subsidiary of Bank of America, charging that defendant had knowingly and repeatedly violated the Servicemembers Civil Relief Act, ignoring a provision that required court approval before foreclosure on active-duty service members. " *Without admitting wrongdoing*, the former Countrywide unit agreed to pay $20 million to approximately 160 victims of illegal foreclosures… [M]ost of the improper foreclosures began before Bank of America acquired Countrywide…" In a March 3, 2013 Dealbook report, the New York Times reported "Banks Find More Wrongful Foreclosures Among Military Members." Bank of America and other major lenders uncovered the foreclosures while analyzing mortgages as part of a multibillion-dollar settlement deal with federal authorities.

Bank of America: Bloomberg, April 15, 2011, BofA's$1.6 Billion Ends Assured's 'Chinese Water Torture', Andrew Frye and Hugh Son. Bond insurer Assured Guaranty settled claims against Bank of America involving breaches of representations and warranties on home loans. Bank of America still faces suits from insurers including MBIA and Ambac. The agreement includes a cash payment plus loss-sharing that could bring the total cost to about $1.6 billion.

Bank of America: Bloomberg, Feb. 5, 2011, Bank of America to Pay $410 Million to Settle Overdraft Manipulation Claim, David E. Rovella. Bank of America agreed to pay $410 million to settle lawsuits alleging deceptive practices in the management of customer accounts that led to excessive fees for overdrafts. The overdraft class action alleged breach of contract, unjust enrichment and usury. Other banks were also named in the class action. One of the plaintiffs in the class action stated "The bank actively provides false or misleading balance information…that in turn deceives these customers into making additional transactions that, in turn, will generate even more overdraft fees…" The settlement was approved by a federal judge in November 2011.

Bank of America: Bloomberg, Jan. 3, 2011, BofA Resolves Fannie Mae, Freddie Mac Loan Putback Dispute, Hugh Son and Dawn Kopecki. Bank of America paid $2.8 billion to Freddie Mac and Fannie Mae after the firms demanded BofA to buy back mortgages allegedly based on faulty data. The cost to BofA is about $3 billion, including additions to loss reserves for loans that weren't part of the deals settled today. When banks sell mortgages they typically offer representations and warranties guaranteeing that information backing the loans is accurate, including borrowers' income and appraised value of the home. If the data was proven wrong, the bank may buy back the loan or reimburse investors for the lost value.

Bank of America: SEC For Immediate Release, 2010-197, October 15, 2010. The SEC announced that Countrywide CEO Angelo Mozilo will pay a record $22.5 million penalty to settle SEC charges that he and other Countrywide executives misled investors as the subprime mortgage crisis emerged. Mozilo also agreed to $45 million in disgorgement of ill-gotten gains, for a total of $67.5 million. In settling the SEC's charges, *the former executives neither admit nor deny the allegations* against them. According to the New York Times, October 15, 2010, Gretchen Morgenson, Lending Magnate Settles Fraud Case, "Bank of America has been paying Mr. Mozilo's legal fees". Countrywide paid $20 million of the $67.5 million penalty. "In one eight-year period, from 2000 until he left the company in 2008, Mr. Mozilo received total compensation of $521.5 million… Mr. Mozilo generated $140 million in gains on stock that he sold from November 2006 through October 2007, the S.E.C. said."

Bank of America: http://apps.americanbar.org/litigation/litigationnews/top_stories/0, April 19, 2010. U.S. District Judge Rakoff has approved Bank of America proposed $150 million securities fraud settlement, after earlier refusing to approve the SEC's $33 million settlement proposal. The SEC complaint alleged that Bank of America lied to shareholders regarding bonuses given to Merrill Lynch executives prior to the merger of the two companies. Bank of America executives claimed that Merrill Lynch had agreed not to pay any bonus until after the merger, whereas the evidence showed that Merrill Lynch had already paid $5.8 in bonuses prior to the vote. The court entered an order approving the revised settlement but still called the parties' proposal 'half-baked justice' and 'far from ideal'*". In the initial $33 million settlement agreement, Bank of America neither admitted nor denied the allegations in the SEC complaint*. This writer has been unable to locate the amended, $150 million settlement agreement on the SEC website. An Associated Press February 22, 2010 article by Larry Neumeister, "Judge Approves SEC-BofA Settlement on Merrill Deal" states: [The judge]"said he was most troubled by the fact that a penalty package that essentially consists of a $150 million fine 'appears paltry.' He said he was also bothered that the fine penalizes the shareholders for what was, 'in effect, if not in intent, a fraud by management on the shareholders.'"

Boeing: Department of Justice, For Immediate Release, June 30, 2006. The DOJ announced a final agreement with Boeing to resolve criminal and civil allegations that Boeing improperly used competitors' information to procure contracts for launch services worth billions of dollars from the Air Force and National Aeronautics and Space Administration. The $615 million settlement includes a $565 million civil settlement and a $50 million monetary penalty according to a separate criminal agreement. The amount is a record for government procurement fraud, for the Department of Defense and for NASA. The government's investigation focused on Boeing's relationship with former Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management, Darleen Druyun, who was the Air Force's top career procurement officer before she retired in 2002. "[S]he wielded influence over billions of dollars in contract awards…" Boeing, at Druyun's request, hired Druyun's daughter and future son-in-law. In 2002 Boeing recruited Druyun herself. "The government's investigation also focused on the EELV program, with which the Air Force sought to usher in a new generation of space launch vehicles to serve the government's critical satellite needs through 2020. Those sources ended up being Boeing and Lockheed, with Boeing's low pricing leading the Air Force to favor Boeing… The United States alleged that, prior to this award, Boeing obtained more than 22,000 pages of documents from Lockheed Martin, certain of which contained confidential competition-sensitive or other proprietary information that related to Lockheed's EELV program and that some of this information was used to unfairly assist Boeing in the EELV competition… The United States further alleged that the lack of competition plus Boeing's false claims for certain costs, resulted in Boeing charging NASA much more…than NASA should have paid." The Under Secretary of the Air Force stated "it wasn't a proud time in their [Boeing's] history and in some ways it wasn't a proud time in our history, but Boeing is a competent and capable contractor and we look forward to a positive working relationship." The Project on Government Oversight, POGOm commented, on May 15, 2006, on the settlement: *Boeing's settlement allows it to avoid criminal charges and any admission of wrongdoing."*

Boeing: POGO.org, Federal Contractor Misconduct Database lists and describes 46 separate "Instances of Misconduct" and accords Boeing "Ranking: 2" in the Federal Contractor Misconduct Database. For full details as to these 46 instances, see http://www.contractormisconduct.org/index.cfm/1,73,221,html?ContractorID=13ranking=2.

Caterpillar: ENR.com, 7-28-2011, Tudor Van Hampton. "Caterpillar Inc. is recalling diesel engines and will pay $2.55 million in civil penalties under a Clean Air Act federal consent decree made public today. The settlement…says that the Peoria, Ill.-based manufacturer shipped more than 590,000 on and off-road engines between 2002 and 2006 that were not equipped with emissions controls needed to meet U.S. Environmental Protection Agency tailpipe standards." The consent decree stated "*Caterpillar denies the violations alleged in the Complaint and does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint."*

Caterpillar: Top Class Actions, Caterpillar 401(k) Class Action Settlement, 26 Aug. 2010, Matt O'Donnell. A federal district court granted approval of a settlement under which Caterpillar will pay $16.5 million. The suit alleged that Caterpillar employees and retirees paid excessive fees in order to remain invested in the company's four 401(k) plans. "The lawsuit alleged Caterpillar breached its duties under ERISA by allowing the plans to pay excessive investment management and other fees because it maintained excessive cash in the company stock investment fund, and because it offered the Preferred Group of Mutual Funds as plan investment options between 1992 and 2006, which were advised by a wholly-owned Caterpillar subsidiary."

Caterpillar: EPA Civil Cases and Settlements by Date, 10/22/1998. "On October 22, 1998, the Department of Justice and the Environmental Protection Agency announced an $83.4 million total penalty against diesel manufacturers, the largest civil penalty ever for violation of environmental law. Under this settlement, seven major manufacturers of diesel engines [including Caterpillar] will spend more than one billion dollars to resolve claims that they installed computer devices in heavy duty diesel engines which resulted in illegal amounts of air pollution emissions. This settlement will prevent 75 million tons of harmful nitrogen oxide (NOx) emissions nationwide by the year 2025."

DuPont: Department of Justice, For Immediate Release, April 20, 2009. DuPont and Lucite International have agreed to pay a $2 million civil penalty to settle Clean Air Act violations at a sulfuric acid plant in Belle, W. Va. In a joint complaint, filed concurrently with the consent decree, the United States and West Virginia allege that the companies made modifications to their plant in 1996 without first obtaining pre-construction permits and installing required pollution control equipment. The Clean Air Act requires major sources of air pollution to obtain such permits before making changes that would result in a significant emissions increase of any pollutant.

DuPont: EPA Newsroom, News Releases by Date, 07/20/2007. The DOJ and the EPA announced a settlement today with DuPont which is expected to reduce more than 13,000 tons of harmful emissions annually from four sulfuric acid production plants. DuPont's violations involved modifications that did not comply with applicable law. DuPont will spend at least $66 million on air pollution controls at the plants and pay a civil penalty of $4.125 million under the Clean Air Act settlement. The additional cost of installing control technologies at all of the remaining three plants is estimated to be at least $87 million. The consent decree contained the following provision: *"Whereas, DuPont does not admit any liability to the United States or any of the State Plaintiffs arising out of acts or omissions alleged in the Complaint…and nothing in this Consent Decree shall be treated as an admission…or evidence of any violation…"*

DuPont: For Immediate Release, Department of Justice, Sept. 29, 2006. The DOJ and the Delaware Department of Natural Resources and Environmental Control reached an agreement today with chemical companies DuPont and Ciba to resolve claims relating to the release of hazardous substances from the DuPont Newport Superfund Site. DuPont and Ciba will pay over $l.6 million for cleanup costs, natural resource damages and restoration projects.

DuPont: The Washington Post, Dec. 15, 2005, Firm Didn't Report Risks, Agency Says, Juliet Eilperin. The EPA reached a $16.5 million settlement with DuPont yesterday over the company's failure to report possible health risks associated with perfluorooctanoic acid, a chemical compound used to make Teflon. "The fine, the largest civil administrative penalty the agency has ever obtained, includes a $10.25 million penalty and a pledge by DuPont to spend an additional $6.25 million on environmental projects… The agreement…ends the agency's 16-month push to hold DuPont accountable for not turning over evidence to the government from as far back as 1981 about the substance also known as PFOA. That evidence documented that the compound…could be transferred from a woman to her baby via the placenta." DuPont officials *did not admit legal liability as part of the agreement.* They said they did not deliberately withhold information from the government and settled with EPA only to avoid a long and costly court battle. According to the Washington Post article, "the agency could have fined the company as much as $313 million." The President of the Environmental Working Group, whose advocacy spurred the EPA to act, said "the penalty was just a small fraction of what DuPont owed the public. He said the fine amounted to less than half of 1 percent of the company's after-tax profits from the Teflon-related products over the past 20 years."

DuPont: DOJ For Immediate Release, July 31, 2003. The DOJ and the EPA announced today a settlement with DuPont as to Clean Air Act violations involving a May 1997 chemical release from DuPont's fluoroproducts plant in Louisville, Kentucky. Under the proposed agreement, DuPont will pay $550,000 in civil penalties and perform supplemental environmental projects valued at $552,000. [determine whether any admission of wrongdoing]

For further DuPont misconduct information, see Corporate Research Project, DuPont: Corporate Rap Sheet, by Phillip Mattera. http://www.corp-research.org/dupont.

Hewlett Packard: Department of Justice, For Immediate Release, August 30, 2010. "Hewlett-Packard (HP) has agreed to pay the United States $55 million to settle claims that the company defrauded the General Services Administration (GSA) and other federal agencies, the Justice Department announced today." The settlement resolves allegations under the False Claims Act that HP knowingly paid kickbacks, or 'influencer fees', to systems integrator companies in return for recommendations that federal agencies purchase HP products. The settlement also resolves claims that HP's 2002 contract with the GSA was defectively priced because HP provided incomplete information to GSA contracting officers. Although not mentioned in the DOJ press release, *HP did not admit wrongdoing.* Law 360, August 02, 2010, Ben James.

Hewlett-Packard: Department of Justice, For Immediate Release, November 10, 2010. "The United Staates has settled two whistleblower lawsuits for $16.25 million alleging that Hewlett Packard Co. (HP) violated the competitive bidding rules of the Federal Communications Commission's (FCC) E-Rate Program at the Dallas and Houston Independent School Districts in connection with technology services contracts with those school districts" A November 10, 2010 New York Times article by Edmond Wyatt commented: "In a statement, Hewlett-Packard said: 'H.P. requires that all employees and partners adhere to lawful and ethical business practices. The activities at the center of this investigation occurred more than five years ago, the partner relationships have been terminated and the employees involved are no longer with the company.' " [FOIA to establish no admission]

Hewlett-Packard: The Washington Post, December 8, 2006, Ellen Nakashima. "California's attorney general announced a $14.5 million civil settlement with Hewlett-Packard over its corporate spying scandal yesterday and said in an interview that he was exploring a possible settlement of criminal charges against the firm's former chairman. Patricia C. Dunn was ousted as chairman in September after the HP ethics and spying scandal became public…. The scandal broke in September when HP acknowledged in a Securities and Exchange Commission filing that investigators probing internal HP leaks to the media had gained access to board members' personal phone records by impersonating the board members, a practice known as pretexting. HP's investigators also conducted physical and electronic surveillance of board members and reporters, according to HP documents. Pretexting violates a California criminal law banning the use of 'false and fraudulent pretenses' to obtain confidential information from a phone company" See also http://en.wikipedia.org/wiki/Hewlett-Packard_spying_scandal. "On September 5, 2006, Newsweek revealed that Hewlett-Packard's general counsel, at the behest of HP chairwoman Patricia Dunn, had contracted a team of independent security experts to investigate board members and several journalists in order to identify the source of an information leak… On September 28, 2006, Ann Baskins, HP's general counsel, resigned hours before she was to appear as a witness before the House Committee on Energy and Commerce, where she would ultimately invoke the Fifth Amendment to refuse to answer questions… On March 14, 2007, the judge in Patricia Dunn's criminal case dismissed all charges. Hunsaker [a former HP general counsel] and the two investigators pled no contest to the wire fraud count; those charges were dismissed pending their completion of 96 hours of community service."

Hewlett-Packard: August 12, 2010, Seattle Times, "Hewlett-Packard cooperating in Int'l bribe probe." Hewlett-Packard said it is cooperating with U.S. and German authorities investigating allegations that three company executives used bribes to win a contact to sell computer gear to the Russian prosecutors' office. See also New York Times, DealB%k, September 13, 2010, Peter J. Henning. "In its 10-Q, H.P. notes for the first time that the investigation is not limited to that one contract in Russia: 'The U.S. enforcement authorities have recently requested information from H.P. relating to certain governmental and quasi-governmental transactions in Russia and in the Commonwealth of Independent States subregion dating back to 2000.'… Even if H.P. is found to have violated the F.C.P.A., that does not mean the company's ability to win government contracts would be at risk." Quoting from an article by Professor Mike Koehler, the Henning article states: "One of the unfortunate beauties of engaging in bribery the U.S. government terms 'unprecedented in scale and geographic scope' is no slowdown in U.S. government contracts in the immediate aftermath of the enforcement action." At this writing, the SEC and DOJ FCPA investigation of Hewlett-Packard has not been resolved.

Hewlett-Packard: For further information as to Hewlett-Packard misconduct, see POGO Federal Contractor Misconduct Database, http://www.contractormisconduct.org/index.cfm/1,73,221,html?CibtractirID=153&rabjubg,,,

Home Depot: Atlanta Journal-Constitution, April 16, 2010, Rachel Tobin Ramos. "Home Depot has agreed to pay $25.5 million to settle a lawsuit by California employees who complained they were not allowed to take lunch and rest breaks in violation of state law… [A] Home Depot spokesman said the company settled because it was the most expeditious and advantageous business decision—not because we believe there was any wrongdoing on our part."

Home Depot: http://en.wikipedia.org/wiki/The-Home-Depot, Whistleblower case: "The Home Depot was embroiled in whistleblower litigation brought under the Sarbanes-Oxley (SOX) law. In July 2005, [a] former employee…filed a whistleblower lawsuit against the Home Depot,

alleging that his discharge was in retaliation for refusing to make unwarranted backcharges against vendors. [The employee] alleges that the Home Depot forced its employees to meet a set quota of backcharges to cover damaged or defective merchandise, forcing employees to make chargebacks to vendors for merchandise that was undamaged and not defective. The Home Depot alleges that it fired [the employee] for repeatedly failing to show up for work… Home Depot has settled the dispute in a stipulation of settlement dated March 28, 2008. In the settlement, Home Depot changed some of its corporate governance provisions. Home Depot also agreed to pay plaintiff's counsel $6 million in cash and
$8.5 million in common stock. " See, also, Reuters, January 12, 2006, US: SEC Opens Informal Probe Into Home Depot. "The U.S. Securities and Exchange Commission has opened an informal investigation into charges that Home Depot Inc. inflated profits through supplier payments meant to cover the cost of damaged merchandise, the New York Post reported on Thursday. The top home improvement retail chain is accused of inappropriately using so-called 'return-to-vendor charges' by overbilling suppliers for goods damaged during shipping, the newspaper said." This writer has been unable to locate on the SEC website any reference to this SEC probe or its outcome.

Home Depot: latimes.com, April 5, 2013, by Louis Sahagun. "The Home Depot USA has agreed to pay $8 million to settle a lawsuit alleging violations of anti-pollution rules and laws prohibiting false and misleading advertising in connection with sales of paints and other coatings containing illegal smog-forming ingredients, air quality officials said… *Under the terms of the settlement, Home Depot admits no liability in connection with the allegations* … As part of the settlement, Home Depot has agreed to develop and implement a new computerized tracking system to ensure that only legal products are sold…."

Home Depot: Yahoo News, June 26, 2011, Paul Elias. "Home Depot accused of violating Buy American Act." The whistleblower suit charges that Home Depot supplied noncompliant material in several military housing projects, in violation of the Buy American Act. The lawsuit alleges that up to half of the products supplied by Home Depot were made in China and other non-designated countries. Home Depot requested dismissal of the suit, noting the government's non-intervention in the case. Federal prosecutors responded "it would be erroneous to assume the government's lack of intervention reflects its conclusion that the case lacks merit." The request for dismissal was denied. At this writing, the case has not been resolved. Mr. Elias' article notes that "in the last six years, Staples Inc., Office Depot Inc. and OfficeMax Inc. have paid a combined $22 million to settle government claims they violated the act."

Home Depot: http://www.disability rights.org/1105.htm. A federal judge has approved a settlement agreement between the Equal Employment Opportunity Commission and Home Depot, requiring Home Depot to implement a national internal policy on the use of job coaches to help employees with disabilities integrate into the workforce and perform successfully. In the case, a developmentally disabled sales associate challenged her termination. In addition to Home Depot's commitment to implement the national internal policy, the settlement requires

Home Depot to pay $75,000 to the terminated employee. *In the settlement, Home Depot denied any wrongdoing or legal violation.*

Travelers: Oregon Department of Justice, December 28, 2007. Oregon Attorney General Settles Insurance Bid-Rigging Charges With The Travelers Companies, Inc. "Attorney General…filed a Stipulated General Judgment…with The Travelers Companies, Inc…resolving charges of bid-rigging in its commercial lines of insurance. Today's agreement…involves conduct known as 'pay to play', a scheme devised by insurance broker Marsh & McLennan…The multi-state investigation revealed that Travelers participated in deceptive bid-rigging, price-fixing and other schemes in the commercial insurance market orchestrated by Marsh & McLennan. The schemes involved large and small companies, nonprofit organizations and public entities that purchased commercial lines of insurance from Travelers and that were misled into believing they received the most competitive commercial premiums available…" Marsh & McLennan had secretly pre-designated certain insurers to win bids, resulting in inflated rates for policyholders that were not competitive. The scheme succeeded because insurers such as Travelers earned preferred status by paying "contingency commissions" to insurance brokers without disclosing those payments to policyholders. As a result of the investigation, Travelers paid compensation for overcharges to a nationwide group of policyholders and adopted significant business reforms that govern its bidding and underwriting practices. The settlement agreement requires Travelers to abide by those reforms and to pay a multi-state group $6 million.

Travelers: The State of Texas, Plaintiff v. The Travelers Companies, Inc., Defendant, Filed in The District Court of Travis County, Texas, December 28, 2007. An Agreed Final Judgment and Stipulated Injunction obligated Travelers to establish a Compliance Program addressing a) federal antitrust laws; b) state antitrust laws; c) state unfair insurance practice laws; d) state insurance laws and regulations; and e) the obligations of Travelers' employees not to engage in conduct that is fraudulent or deceptive, or to aid others who are engaging or attempting to engage in fraudulent or deceptive conduct. The stipulation prohibited collusion and market manipulation, required detailed disclosure of compensation and required the payment of $6 million reimbursement of the "Settling Officials" attorneys' fees and costs. The Stipulation also provided that Travelers *"consents to this judgment without admitting any issue, allegation and/or claims based upon the acts, practices or courses of conduct that are the subject of this investigation."* This was the Texas counterpart of the above described Oregon settlement. All told, Travelers agreed to pay $77 million to six states to settle a class action suit and end investigations into its insurance practices. See http://en.wikipedia.org/wiki/The-Travelers-Companies.

Travelers: California Department of Insurance, June 18, 2012 Press Release. A settlement agreement was reached in an enforcement action against Travelers, resulting in Travelers agreeing to pay $9 million in refunds to policyholders who were overcharged on their premiums, as well as a $1.5 million fine. The Department of Insurance found that Travelers committed numerous violations of the California Insurance Code and Regulations.

Travelers: The New York Times, August 18, 2004. Court Approves Travelers' Asbestos Plan. "A federal bankruptcy judge approved a plan by the Travelers Property Casualty Corporation to pay $500 million to settle claims against it by people with asbestos-related diseases linked to the Johns-Manville Corporation. More than 600,000 people sued Travelers, contending that it knew about the hazards of asbestos and failed to disclose them over the course of about 30 years as Manville's primary insurer.

Travelers: 1998 EIR News Service Inc., April 17, 1998. John Hoefle, Citicorp-Travelers merger is illegal. Referring to the proposed merger, Mr. Hoefle observed: "Under the Banking Act of 1933 (commonly known as Glass-Steagall) and the Bank Holding Company Act of 1956, it is illegal for a single institution to operate a commercial bank, a securities firm, and an insurance company. The new Citigroup would unquestionably violate both the spirit and the letter of these laws… The complete capitulation of the regulators to the Travelers-Citicorp merger, is a warning shot across the bow of U.S. national sovereignty. The issue is not over whether the laws of the 1930s should still apply—that fight was lost long ago—but whether nations should rule the markets, or the markets should dictate to nations, and whether the welfare of the population is more important than the welfare of the financial oligarchy."

Travelers: Congressional Research Service. The Library of Congress, Updated May 19, 1998, M. Maureen Murphy. Banking Acquisition and Merger Procedures. "The [merger] application recognizes that Travelers' various insurance underwriting and agency businesses are not permissible affiliates for a bank holding company under the law and does not seek to retain them beyond the period allowed by law. It states that both Citicorp and Travelers hope for reform of the current bank regulatory system to permit unlimited affiliation between banking, securities, and insurance companies. It further states that if the application is approved, the new bank holding company will conform its nonbanking activities within two years or such longer period as the Board may grant… Retention within Citigroup is sought for Travelers' securities firms, including Salomon Smith Barney, and its consumer finance businesses. The application requests authorization for this under the same provision that has formed the basis for Citicorp's securities affiliate…as activities so closely related to banking as to be a proper incident thereto."

Travelers: New York Times, Sept. 24, 1998. Citicorp's Merger Approved by Fed. " The Federal Reserve yesterday approved the merger of Citicorp and Travelers Group Inc., a combination that would create the world's largest financial services company… The Fed action removes the last obstacle to the merger… The Justice Department also announced yesterday that it has no antitrust problems with the merger…The Fed will also require Citigroup to divest itself of a number of businesses within the next two years in order to comply with the 1956 Banking Holding Company Act. A bill to overturn that 1956 law, which would allow Citigroup to be treated with very few divestitures, is now wending its way through Congress."

Travelers: Excerpt, Age of Greed, by Jeff Madrick, Jan. 27, 2012. "There was one remaining impediment [to the merger], Glass-Steagall. Weill [chairman of Citicorp] had already tested a J.P. Morgan merger on Greenspan, proposing the two companies could combine and operate legally for two years, awaiting a ruling and working on changing the law. Weil had access to the Fed chairman…Weil also talked to the SEC, and called President Clinton and Secretary Rubin to update them on the proposed deal…At last, on October 8, the Fed gave its okay for them to operate legally as a merger for two years to see whether Congress dismantled Glass-Steagall completely… Weil hired Robert Rubin in October 1999, a few months after he left the Clinton administration, to serve in a newly created office of the chairman… Meanwhile, Weil had been working hard to end the Glass-Steagall restrictions. He organized the most powerful allies, including Morgan Stanley, Merrill Lynch, MetLife, and Prudential, to lobby Congress and the president… When Lawrence Summers took over Teasury from Rubin, Summers let Greenspan at the Fed have his way. The Republican House had long been ready to abolish Glass –Steagall entirely. In late 1999, the Gramm-Leach-Bliley bill…was passed with bipartisan support in the House but only along narrow party lines in the Republican-controlled Senate. Glass-Steagall was no more… The legislation was signed into law by Bill Clinton in 2000…No federal regulations would limit the size of financial conglomerates in the foreseeable future.

Travelers: For further information about Travelers' law violations, see http://blawgsearch.justia.com/search?1=100&guery=The+Travelers+Companies+Inc.&s=0.

United Health: Wickipedia, United Health Group. Options backdating investigations and lawsuits: "In 2006, the SEC began investigating the conduct of UnitedHealth Group's management and directors, including Dr. McGuire, as did the Internal Revenue Service and prosecutors in the U.S. attorney's office for the Southern District of New York, who have subpoenaed documents from the company. The investigations came to light after a series of probing stories in the Wall Street Journal in May 2006, discussing the apparent backdating of hundreds of millions of dollars' worth of stock options—in a process called options backdating—by UnitedHealth Group management. The backdating apparently occurred with the knowledge and approval of the directors, according to the Journal… On December 6, 2007, the SEC announced a settlement under which McGuire [former CEO of United Health] was to repay $468 million, including a $7 million civil penalty, as a partial settlement of the backdating prosecution. He was also barred from serving as an officer or director of a public company for ten years." See, also, SEC Litigation Release 20836, December 22, 2008. In a civil injunctive action against United Health, the SEC alleged that "between 1994 and 2005 UnitedHealth concealed more than $1 billion in stock option compensation by providing senior executives and other employees with 'in-the-money' options while secretly backdating the grants to avoid reporting the expenses to investors… The backdated grants resulted in materially misleading disclosures, with the company overstating its net income in fiscal years 1994 through 2005 by as much as $1.526 billion. *The Commission declined to charge the company with fraud or seek a monetary penalty, based on the company's extraordinary cooperation in the Commission's investigation, as well as its extensive remedial measures*." Where was the "extraordinary cooperation" during the 12 years that the company defrauded its stockholders with full knowledge of United Health's senior management?

United Health: SEC Litigation Release 20387, December 6, 2007. "Former United Health Group CEO/Chairman Settles Stock Options Backdating Case for $468 Million… Because of McGuire's [the CEO] misconduct, investors were misled to believe that stock options were granted with strike prices not less than the fair market value of UnitedHealth's stock on the date of grant…*Without admitting or denying the allegations of the Commission's complaint, McGuire consented to the entry of an order permanently enjoining him from violating …securities laws ,* and barring him from serving as an officer or director of a public company for a period of 10 years." This is an instance when the most senior officer of a corporation knowingly committed fraud for many years, yet the SEC did not require him to admit the charges against him. This is an outstanding example of lax regulatory policies failing to discourage outrageously poor corporate governance.

United Health: http://employmentlawgroupblog.com/2011/07/12/third-circuit-ov. "Third Circuit Overturns Lower Court in Favor of Whistleblower Who Exposed Illegal Medicare Kickbacks… [T]he Third Circuit…held in favor of whistleblowers…[who] allege that United Health Group (UHG) provided kickbacks to those physicians who switched patients to UHG's services in violation of the Medicare Anti-Kickback Statute. This statute provides that whoever knowingly and willfully pays a kickback in return for a referral for their health care services…are guilty of a felony…" This Medicare fraud case has been remanded to the District Court and, at this writing, has not been decided.

United Technologies: DOJ For Immediate Release, August 1, 2008. "Pratt & Whitney [a division of United Technologies] and PCC Airfoils to Pay More than $52 Million to Settle Allegations of Selling Defective Jet Engine Parts… Pratt & Whitney and its subcontractor…knowingly sold defective turbine blade replacements for jet engines used in military aircraft… The government's investigation concerned allegations that between 1994 and 2003, replacement turbine blades designed by Pratt & Whitney and cast by PCC failed to met a critical design dimension. This defect caused the crash of an F-16 fighter aircraft in Arizona on June 10, 2003; the pilot ejected safely… Under the settlement, Pratt & Whitney will pay $45.5 million and also will provide $4.825 million in services for re-inspecting potentially serviceable blades bought by the Air Force… The case was pursued as part of a National Procurement Fraud initiative…"

United Technologies: POGO Federal Contractor Misconduct Database, Feb. 21, 2007. "European Union regulators on Wednesday fined United Technologies' Otis unit and four other elevator makers $1.3 billion for operating cartels for the installation and maintenance of elevators and escalators in Germany, Belgium, Luxembourg and the Netherlands… Otis was fined almost 225 million euros (approximately $295 million.)" In a February 27, 2007 press release, United Technologies said it will appeal. On November2012, the European Union Commission rejected the United Technologies appeal, finding that is was "inadmissible and should be dismissed."
http://www.mondaq.com/x/206340/Cartels=Monopolies/ECJ+Rejects=Otis=And=UTC=A.

United Technologies: Federal Contractor Misconduct Database-POGO United Technologies Corporation. "United Technologies Corporation's Prate & Whitney (P&W) Government Engine and Space Propulsion Division entered into a settlement agreement in which P&W agreed to pay the government $14.8 million, following a Defense Criminal Investigative Service investigation. The agreement resolved charges that P&W violated the False Claims Act…by preparing false purchase orders and submitting false invoices under the Foreign Military Sales Program…administered by the Defense Security Assistance Agency. The program involved the FMSP-funded Lavi fighter aircraft under development for the Israeli Air Force…"

United Technologies: Federal Contractor Misconduct Database--POGO United Technologies Corporation. "United Technologies and two of its subsidiaries…settled criminal and civil charges in connection with the export of sensitive military software to China. The government claimed that, between 2002 and 2005, [subsidiary Pratt & Whitney] sold to China engine-control software made by [subsidiary] Hamilton Sundstrand, which {Pratt & Whitney] knew China was using to develop its first modern military attack helicopter…The government also alleged that United Technologies, PW and Hamilton Sundstrand failed to disclose to the U.S.. government the illegal exports to China for several years, and when they did, their disclosures contained numerous false statements. The three companies also entered into a two-year *deferred prosecution agreement* and paid a total of $75.7 million in fines and penalties ($20 million of which is a suspended amount which United Technologies agreed to spend on remedial compliance measures)…"

United Technologies: For additional instances of misconduct, see Federal Contractor Misconduct Database-POGO, Contractor Results, United Technologies Corporation.

Conclusion

Twenty-eight of the thirty huge public companies comprising the Dow Jones Industrial Average have been implicated in egregious corporate malfeasance in recent years, in many cases on a repetitive basis. Many of these failures of corporate governance were condoned, participated in, or well known in advance, by members of senior management of the offending companies. Rarely was the corporate entity or any member of its senior management found responsible for the offense by a federal regulatory agency. In SEC and DOJ settlements of corporate malfeasance charges, almost invariably neither the corporate entity nor any of its senior officers is required to admit wrongdoing.

This long standing federal regulatory practice has had the effect of virtually eliminating from investment analysts' reports any mention of the corporate wrongdoing of the entity being analyzed. Investment advisors cannot be expected to assume the risk of commenting on corporate malfeasance when the settlement agreement with the regulatory agency states that neither the settling corporation nor its senior management admits wrongdoing. Hence, even serious, repetitive corporate wrongdoing is disregarded by the analysts and is not a significant factor in the making of most investment decisions.

The United States has achieved its paramount world status to a large extent because of our commitment to the rule of law. Freedom of speech and the press, minority rights, due process, duly elected state and federal officials and the other attributes of faithful observance of the rule of law have contributed not only to our preeminence as a world leader but also to the US dollar's status as the world's reserve currency. Yet, as demonstrated by the cases referred to above, observance of the rule of law by our major corporations has steadily deteriorated for several decades.

Federal regulatory agency permissive settlement ground rules are exacerbating the race to the bottom by corporate America, in disregard of every objective other than the quest by senior management for increased short-term profits, bonuses and stock options. The path being followed is highly rewarding to the stewards of our large public companies. But would investors generally and our society as a whole be benefited by a return of our major public companies to observance of the rule of law? The SEC, DOJ and other federal regulatory agencies could facilitate this by requiring an admission of wrongdoing when the evidence indicates that members of senior management either participated in, condoned or had advance knowledge of (and thereby permitted) the misconduct.