



# WORST CORPORATE CONDUCT OF 2017

DECEMBER 2017

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**Front Cover:** (clockwise from top left) Monsanto CEO Hugh Grant, Johnson & Johnson CEO Alex Gorsky, Takata CEO Shigehisa Takada, McKesson CEO John Hammergren, Equifax CEO Richard Smith, United Airlines CEO Oscar Munoz, Wells Fargo CEO John Stumpf, and Fox News CEO Roger Ailes.

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Source: The Financial Brand

# THE WORST CORPORATE CONDUCT OF 2017

Corporate misconduct is not just a news story on the financial pages. As big companies play an ever-increasing role in our daily lives, misconduct impacts us in our work spaces, our homes, our cars, our phones, and even in our medicine cabinet. Here are 2017's worst examples of corporate misconduct:

## **United Airlines Forces a Passenger off a Plane, Breaks His Nose, Knocks Out His Teeth**

- **Violently removed a passenger from plane**
- **Killed rabbit, man-handled violinist, barred teens for wearing leggings, and resold children's seats**

On April 9, Kentucky doctor David Dao was violently dragged from his seat on a United Airlines flight to make room for United personnel. Dao suffered a concussion, broken nose, and lost two front teeth in the incident, which was recorded by nearby passengers and shared on social media, causing a worldwide outcry.<sup>1</sup> Other passenger horror stories soon came to light, including a 71-year-old man being knocked unconscious by a United employee and subsequently told he would have his frequent flyer miles taken away and be banned from flying United if he complained.<sup>2</sup>

United Airlines		
REVENUES	PROFITS	CEO COMPENSATION
\$36.5 billion	\$2.2 billion	CEO Oscar Munoz made \$18.7 million in 2016, more than any other airline CEO.

Facing a series of lawsuits from Dao and other angry passengers, United committed to changes to its customer experience policies, including limiting the use of law enforcement to safety issues; only requiring customers to give up their seats for safety and security reasons; and increasing compensation for passengers who voluntarily give up seats.<sup>3</sup>

United passengers weren't out of the clear though. The airline made news for a variety of other incidents throughout the year, including the death of a giant bunny rabbit in one of its holds, the man-handling of a classical violinist, the blocking of two teenagers boarding a flight because they were wearing leggings, and a mother forced to hold her two-year-old son for a three hour flight after the airline resold his seat.<sup>4</sup>

In September, the U.S. Department of Transportation announced it had found no reason to fine United over the Dao incident. Dao himself settled confidentially with United.<sup>5</sup>

### Monsanto's Ghostwriting of Scientific Studies

- Ghostwrote scientific studies to hide cancer implications

Employees of the giant agrochemical company Monsanto ghostwrote scientific reports that led the U.S. Environmental Protection Agency (EPA) to conclude that glyphosate, a chemical in its Roundup weed killer, did not cause cancer. Emails discussing the ghostwriting were revealed as part of a mass litigation by farmers and others claiming that Monsanto failed to warn that Roundup could cause non-Hodgkin's lymphoma.

Monsanto		
REVENUES	PROFITS	CEO COMPENSATION
\$13.5 billion	\$1.3 billion	CEO Hugh Grant made \$11.8 million in 2016, but was also given a \$600 million bonus in 2015.

In one email, a Monsanto executive stated, "we would be keeping the cost down by us doing the writing" while researchers "would just edit & sign their names so to speak."<sup>6</sup> Other court records show that Monsanto was working with an EPA official to stop the U.S. Department of Health and Human Services (HHS) from beginning its own review. One Monsanto executive wrote in an email that the EPA

official had told him, "If I can kill this, I should get a medal."<sup>7</sup> HHS did not go forward with the review.

The International Agency for Research on Cancer, a branch of the World Health Organization, determined that glyphosate was a probable carcinogen in 2015, prompting Monsanto's public relations campaign.



## The Wall Street Push to Repeal the CFPB Rule on Forced Arbitration

- **Massive lobbying effort allowed industry to evade a rule preventing forced arbitration clauses**

Having already squirmed out of billions of dollars in penalties for misconduct related to the 2008 financial crisis by forgiving billions of dollars' worth of loans they had already sold, Wall Street banks gave themselves another "Get Out of Jail Free" card by shutting down the Consumer Financial Protection Bureau's (CFPB) attempt to hold them accountable.<sup>8</sup>

### Wall Street

REVENUES	PROFITS	CEO COMPENSATION
\$1.4 trillion	\$173 billion	The CEOs of JPMorgan Chase, Morgan Stanley, Goldman Sachs, Bank of America, and Citigroup took the top five slots in the world's bank CEO pay rankings, and made a combined \$109 million.

In October, a massive lobbying effort by the banking industry paid off when 50 Republican senators voted to prevent the CFPB from banning forced arbitration clauses in the fine print of credit card agreements.

The use of forced arbitration clauses has soared as corporations realize it allows them to circumvent courts and avoid accountability—there are more than half a billion forced arbitration clauses hidden in the credit card agreements, bank accounts, and other contracts

to which consumers are subject.<sup>9</sup> Such clauses require Americans to "agree" to surrender fundamental constitutional rights, often without ever realizing it. Legal disputes are funneled into a secret system where there is no right to go to court, no right to a jury, no right to a written record, no right to discovery, no legal precedents to follow, and no judicial review.



CEOs from Goldman Sachs, JPMorgan Chase, Bank of New York, Bank of America, State Street, Morgan Stanley, Citigroup, and Wells Fargo testify before bailout hearings in 2009.

The CFPB had spent the previous three years exhaustively studying forced arbitration, and concluded that it was unfair to consumers.<sup>10</sup> The agency's subsequent rule banning such clauses was overruled by a little-used special legislative maneuver, and still required a tie-breaking vote from Vice President Mike Pence to pass. CFPB head Richard Cordray described the vote as, "a giant setback for every consumer," while Massachusetts Sen. Elizabeth Warren was more blunt, calling it, "a giant wet kiss to Wall Street."<sup>11</sup>

### Wells Fargo's Wrongful Repossession of 25,000 Customers' Cars

- **800,000 customers charged for bogus car insurance**
- **25,000 cars wrongfully repossessed**

Wells Fargo charged more than 800,000 customers for auto insurance they didn't need and often didn't know about. As many as 274,000 customers were forced into delinquency by the expense of the unneeded insurance, and almost 25,000 had their cars wrongfully repossessed.<sup>12</sup>

Wells Fargo		
REVENUES	PROFITS	CEO COMPENSATION
\$88.3 billion	\$21.9 billion	Longtime CEO John Stumpf walked away with \$130 million in 2016. New CEO Timothy Sloan was paid \$12.8 million in 2017.

As early as 2006, Wells Fargo began charging customers for the insurance, which was more expensive than the insurance the customers had separately obtained. The bank added the insurance fees to the auto loan charges, meaning many customers unwittingly experienced automatic deductions from their accounts that were higher than expected, resulting in overdraft charges and damages to credit scores.

Wells Fargo ended the practice in 2016, but did not publicly admit what it had done until confronted by the *New York Times* more than a year later. The bank claimed that it would reimburse as much as \$80 million to customers, but a lawsuit filed in California court sought to make sure Wells Fargo not only pay back its customers but also hand back the profits it made off them. The suit called for the company to promise not to charge customers for such unneeded insurance in the future.<sup>13</sup>

The unneeded insurance scandal is just the latest scandal at Wells Fargo, which, in 2016, was caught charging customers for over two million phony accounts, trying to force those customers to abide by arbitration agreements they never actually signed, and then lying about it to Congress.<sup>14</sup> The bank was also forced to pay a \$1.2 billion fine for shady mortgage lending practices, \$4 million for illegally repossessing servicemembers' cars, and is currently trying to push into arbitration a class action accusing the bank of unfair overdraft practices.<sup>15</sup>



## FOX News’ \$50 Million One-Year Bill for Sexual Harassment

- \$50 million paid to settle sexual harassment claims
- Bill O’Reilly’s contract renewed despite six multimillion dollar settlements
- Employees gagged by forced arbitration clauses

In August 2017, 21st Century Fox revealed in regulatory filings that it had paid approximately \$50 million to settle a string of sexual harassment and discrimination cases over the previous fiscal year.<sup>16</sup> The network’s sexual harassment problems first hit the news in July 2016, when television commentator Gretchen Carlson filed a sexual harassment lawsuit against Fox News Chairman Roger Ailes. Carlson alleged that she was fired from her program for refusing Ailes’ sexual advances. Ailes invoked a forced arbitration clause in her contract that not only prohibited her from having her claims heard in court, but also sought to enforce a gag order on “all relevant allegations and events leading up to the arbitration.”<sup>17</sup>

Soon after Carlson went public with her experience, more women came forward with their own claims of sexual harassment. Fox hired the law firm Paul, Weiss to conduct an internal investigation, which found a corporate culture rife with rampant sexual harassment. Ailes was fired, Fox settled Carlson’s suit for \$20 million, and paid a further \$30 million in other cases.<sup>18</sup>

Still, in February 2017, the network renewed the contract of its top-rated host, Bill O’Reilly, at a cost of \$100 million, despite the fact that it knew O’Reilly had been forced to pay \$32 million to a co-worker who had complained of repeated sexual harassment the previous month. However, the network did take the opportunity to remove a clause in the renewed contract that had previously protected O’Reilly from being fired for any allegation, unless that allegation was proved in court.<sup>19</sup>

In April, the *New York Times* revealed O’Reilly and Fox had spent at least \$13 million settling five previous accusations of sexual harassment, the network finally fired the host—and gave him \$25 million as a going away gift.<sup>20</sup>

In March 2017, Carlson joined several members of Congress at a press briefing as they announced legislation that would curb the use of forced arbitration. Carlson said the secretive nature of the forced arbitration process means that victims of sexual harassment cannot obtain justice. “By forcing women to be silent about

Fox News		
REVENUES	PROFITS	CEO COMPENSATION
\$2.3 billion (2015)	\$1.5 billion (2015)	Longtime CEO Roger Ailes was paid \$6 million in salary and \$21 million in total compensation the year before the scandal. After the accusations of his rampant sexual harassment, he walked away with a \$40 million exit package.

illegal and abusive behavior which causes them much pain, in many cases, the employer is able to leave the abusers in the workplace to harass again,” she said. “No one starts a job expecting to get into a dispute... The argument that victims of harassment agree to give up their constitutional rights when they sign a contract is ridiculous. Employers are insisting that employees give up their rights to have that job.”<sup>21</sup>

### Equifax Profiting from its Massive Data Breach

- **Half the nation’s financial details breached**
- **Company profits from credit-monitoring service offered in wake**
- **Small print contains forced arbitration clause**

In September, Equifax—one of the nation’s largest credit reporting agencies—revealed that it had suffered a massive security breach two months earlier that compromised the Social Security numbers, addresses, birthdates, and driver’s license numbers of nearly half of America’s population. While Equifax waited for weeks to tell the public their information had been hacked, several top executives sold \$1.8 million worth of shares days after the breach.<sup>22</sup>

Equifax		
REVENUES	PROFITS	CEO COMPENSATION
\$3.1 billion	\$488 million	CEO Richard Smith retired after scandal with a \$90 million payday in salary and vested stock.

Equifax was warned about the software vulnerability as early as March, but the company did nothing to fix it. The company’s databases were hacked on May 13, but its IT team did not notice until July 29. Nearly a month went by until Equifax’s since-departed CEO, Richard Smith, decided to inform his board of directors on August 24. Two more weeks went by before the public was notified.<sup>23</sup>

As negligent as Equifax was about its security, it was far more competent when it came to taking advantage of the breach. Once the breach became public, Equifax offered the 145 million people affected free identity theft protection and credit monitoring through TrustedID. The credit monitoring service had the potential to be a gold mine for Equifax. While the first year of service was free, subsequent years cost \$17 a month. By October, 7.5 million people had signed up for the service. In a Senate Banking Committee hearing, Senator Elizabeth Warren pointed out that if just one million of those customers renewed or forgot to cancel the service, Equifax would make \$200 million.<sup>24</sup>

Even more galling, buried in the fine print of both Equifax’s website and TrustedID’s terms and conditions were forced arbitration clauses forcing customers to unwittingly waive their legal rights.<sup>25</sup> After a massive public outcry, Equifax removed the clause, but in a congressional hearing former-CEO Smith admitted the company would still pursue forced arbitration as a “legally viable path.”<sup>26</sup>

A number of lawsuits on behalf of individuals and small businesses affected by the breach are pending across the country.

### Johnson & Johnson’s Catalog of Dangerous Products

- **Company defending a wide variety of dangerous products, responsible for a variety of injuries, sicknesses, and hundreds of deaths**

Johnson & Johnson (J&J), the world’s biggest health care products company, was taken to task with six of the seven largest dangerous product verdicts of 2016, and faces tens of thousands more lawsuits over other dangerous products in 2017.<sup>27</sup>

Johnson & Johnson		
REVENUES	PROFITS	CEO COMPENSATION
\$72 billion	\$17 billion	Alex Gorsky’s total compensation came to \$27 million. He also owns shares in J&J worth an estimated \$19 million.

**Talc:** J&J is facing more than 5,000 lawsuits over allegations its talc products cause ovarian cancer. Documents unsealed during litigation allegedly show that J&J was concerned about asbestos fibers contaminating its talc products as early as the 1970s. Nevertheless, J&J trained its employees to maintain that the cancer-causing substance “has never been found and it never will.”<sup>28</sup> The lawsuits seek restitution for injured victims, but also ask that J&J place a warning label on its product or switch to a safer cornstarch formula.<sup>29</sup>

**Xarelto:** There are more than 18,000 cases involving the blood thinner Xarelto, which is thought to cause uncontrollable bleeding. J&J made \$2.29 billion off the drug, which has been linked to at least 370 deaths by the Food and Drug Administration (FDA).<sup>30</sup>

**Risperdal:** J&J faces at least 18,500 lawsuits over its antipsychotic drug Risperdal, which can cause young boys to suffer gynecomastia—the development of female breast tissue. J&J’s Janssen unit, has been accused of hiding evidence as early as 2003 that the rate of gynecomastia associated with Risperdal was far higher the company let on. Research shows that children and adolescents taking Risperdal are five times more likely to develop gynecomastia.<sup>31</sup>

**Pelvic Mesh:** J&J’s Ethicon unit is under fire for its pelvic mesh product, which was marketed as a low-cost way to treat urinary incontinence for hundreds of thousands of women, but left many in debilitating pain.<sup>32</sup> Thousands of women are suing Ethicon for ignoring the serious risk of injury associated with the product. In September, a jury awarded Ella Ebaugh, a 51-year-old Pennsylvania woman, \$57 million for injuries caused by the Ethicon mesh,

which eroded into her urethra and remains embedded even after multiple surgeries.<sup>33</sup>

**DePuy Artificial Hips:** DePuy Orthopaedics, a division of J&J, began receiving complaints about its ASR XL Acetabular hip replacement system immediately after its 2005 introduction. Doctors reported the device shed large quantities of metallic debris and frequently caused infection, fractures, dislocations, necrosis, and nerve damage. Executives discussed the need to fix the device’s flaw, but eventually chose not to do so. The device failed internal tests in 2007, and internal company documents showed that DePuy expected about 40 percent of the devices to fail within *five years* of implantation. Surgeons working for the company as consultants stopped using the hips, but executives buried their complaints and continued to sell the devices.<sup>34</sup> It was not until 2010 that DePuy stopped selling the ASR XL hips, and even then, the company attributed the decision to poor sales, not medical problems. In November 2017, a Dallas jury found that DePuy had failed to properly warn doctors and patients that its Pinnacle hips would prematurely fail, and awarded \$247 million to six patients who had to have their hips surgically removed. The trial was the fourth Pinnacle bellwether trial, in which claims by multiple plaintiffs were consolidated into one case. Juries in two of the previous bellwether trials returned verdicts of \$502 million and \$1.04 billion (later reduced to \$150 million and \$543 million respectively).<sup>35</sup>

**Takata’s Cover-Up of 70 Million Potentially Lethal Air Bags**

- 70 million potentially lethal air bags
- 10 year cover-up
- At least 19 dead, and many more injured
- Replacing with air bags that may themselves be deadly

Takata		
REVENUES	PROFITS	CEO COMPENSATION
\$5.1 billion in 2014, before full extent of scandal was evident. Now negotiating sale and bankruptcy.	\$94 million in 2014	Shigehisa Takada earned \$1.7 million in 2013, but saw his compensation cut to a mere \$800,000 in the wake of the scandal.

After more than 10 years of cover-ups and partial disclosures, Japanese auto parts maker Takata admitted that as many as 70 million of its air bags were prone to exploding and imbedding metal shrapnel into front seat occupants. Takata and its biggest customer, Honda, were allegedly aware of the problem as early as 2004, but neither company alerted the public until 2008, when a recall was issued covering just 4,000 cars.<sup>36</sup> When federal regulators finally took notice, their investigation was so short that it was closed before Takata had fully responded. However, trial attorneys continued

to investigate the claims. In February, Takata agreed to pay \$1 billion to settle a criminal case, and set up a \$125 million compensation fund.<sup>37</sup>

However, the danger is far from over. It is anticipated that it will take until 2020 for all the air bags to be replaced, prompting some auto makers to warn car owners not to let passengers ride in the front seat.<sup>38</sup> And many of the replacement air bags are modified Takata air bags that are themselves being recalled.<sup>39</sup> Meanwhile, the National Highway Traffic Safety Administration (NHTSA) faces opposition from auto manufacturers like Ford and Mazda that have argued the risk from the deadly air bags is minimal, and refused to recall all affected cars.<sup>40</sup>

At least 19 people have died from injuries caused by the defective air bags.<sup>41</sup>

## **McKesson's Billion-Dollar Profiteering from the Opioid Crisis**

- **Flooded market with enough opioids to keep every person in America medicated around the clock for three weeks**
- **183,000 dead from overdoses since 1999**
- **Turned opioids into a \$13 billion-a-year industry**

Pharmaceutical manufacturers and distributors have flooded America with prescription opioids, resulting in an unprecedented public health crisis. Since 1999, more than 183,000 Americans have died from prescription opioid overdoses.<sup>42</sup>

In 2015, there were enough opioids prescribed in America to keep every American medicated around the clock for three weeks, in large part because of the actions of giant drug distributors, in particular market-leader McKesson Corporation.<sup>43</sup> Ranked #5 on the FORTUNE 500, McKesson has made billions of dollars by distributing millions of doses of highly addictive pain medicines containing oxycodone and hydrocodone—the source drugs of the nation's opioid epidemic—for years, even when the company knew the drugs were hitting the black market.

The distributors were required by federal law to report suspicious narcotics orders, including orders of unusual size or frequency. But more often than not, the companies failed to do so, often ignoring warnings from their own employees or even the Drug Enforcement Agency (DEA), and made billions in the process.<sup>44</sup> In 2016, the *Washington Post* reported that at least 13 drug distributors knew or should have known that hundreds of millions of prescription opioids were hitting the black market, but continued to send the drugs.<sup>45</sup>

In January 2017, McKesson, paid a \$150 million fine to settle a Department of Justice case over its failure to report suspicious narcotics orders.<sup>46</sup> Yet the fine amounted to small change for McKesson, which made an estimated \$2.9



billion from opioids alone in 2015.<sup>47</sup> McKesson also vowed to upgrade its compliance program to identify and report orders that might be diverted to the black market. But McKesson had already made a similar promise in 2008, when it paid a \$13 million fine over the exact same issue.<sup>48</sup> According to former DEA agent Joe Rannazzisi, “even after we charged them civilly and took civil fines after them, even after they had memorandums of understanding that they knew what to do now, three years later, they started violating the law again.”<sup>49</sup>

McKesson		
REVENUES	PROFITS	CEO COMPENSATION
\$192.5 billion	\$2.3 billion	CEO John Hammergren made \$692 million over the past 10 years.

Moreover, while McKesson and other industry players were publicly vowing to clean up their act, they were also engaged in a \$100 million dollar lobbying effort to pass a law that would make it virtually impossible for the DEA to freeze suspicious narcotics shipments.<sup>50</sup> At the same time, while McKesson was making billions off the opioid crisis, and failing to follow through

on promises to watch over drug distribution, the company’s CEO, John Hammergren, was making a fortune. Over the past decade, Hammergren made \$692 million—an amount that was undiminished by the \$150 million federal fine because the company deliberately excluded it from performance measures that determined executive pay.<sup>51</sup>

In March 2017, attorneys in West Virginia filed lawsuits in federal court on behalf of counties hit hard by the opioid crisis. No state has been hit harder than West Virginia, which has the highest drug overdose death rate in the nation at 41.5 per 100,000 people.<sup>52</sup> Between 2007 and 2012, drug wholesalers pumped 780 million opioid pills into West Virginia—a state with a population of just 1.8 million—leading to the deaths of 1,728 people who fatally overdosed, according to an investigation by the *Charleston Gazette-Mail*.<sup>53</sup> The problem is so severe in the state that the cost of transporting dead bodies has doubled in two years, and has required some mortuary staff to come out of retirement.<sup>54</sup>

“The purpose of these lawsuits is to make the economic cost of willfully violating the law so significant that we force the wholesalers to abide by the law,” attorney Paul Farrell Jr. told the *Washington Post*.<sup>55</sup>

Following in the footsteps of West Virginia, at least 25 cities and counties across the United States filed lawsuits against the distributors, manufacturers, and large drugstore chains behind the crisis.

# CONCLUSION

While these stories may be the most high-profile examples of corporate misconduct, they are hardly isolated incidents. Each story is a result of a corporate culture that ratchets up sales quotas and growth goals, incentivizing fraud, unwittingly or not. The occasional regulatory penalty is baked into the culture as a tolerable side-effect—the world's 20 leading banks spent an estimated \$350 billion on costs related to misconduct over the last five years, including penalties, fines, settlements, and other legal expenses.<sup>56</sup>

Despite these scandals, corporations are actually cutting back on compliance training, with a quarter of all companies having no compliance budget at all, and more than half having no compliance training for board members.<sup>57</sup> At the same time, white collar prosecutions by the Department of Justice under the Trump administration are at a 20-year low.<sup>58</sup>



When corporations put profits before safety and customer and employee welfare, and the regulatory system proves unable to force change, the civil justice system is the last line of defense to protect consumers. Lawsuits have proven to be the most effective, and sometimes the only, mechanism for deterring negligent behavior and rooting out corporate misconduct.

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