

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda--underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board
--in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
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- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
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- Reed Elsevier, Inc.
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- Peabody Energy
- Intuit, Inc.
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- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at www.SourceWatch.org.

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

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Resolution Opposing Unfair and Unbalanced Insurance "Bad Faith" Legislation

Summary

This resolution is responsive to efforts by the plaintiffs' bar, represented by the Association of American Justice (formerly the Association of Trial Lawyers of America) and its state-level affiliates, to enact legislation that undermines settled principles of contract law by unreasonably expanding the liability of insurance companies for so-called "bad faith" in claims handling and processing. These efforts seek to create new or expansive private causes of action, lower existing viable and fair standards that need to be met in order to file an action, and allow for recovery of additional penalties, including damages multipliers, punitive damages and one-way attorneys' fees. The plaintiffs' bar has been successful in getting such legislation passed in a few states and has actively advocated for passage in many more.

Resolution

PURPOSE: Urging state legislatures to adhere to traditional principles of contract law and oppose unfair and unbalanced legislation designed to create new or expansive private causes of action, dilute existing standards for so-called "bad faith" insurance claims handling, and provide for recovery of new extra-contractual damages, including damages multipliers, punitive damages and one way awards of attorneys' fees.

WHEREAS, some state legislatures have enacted laws unreasonably expanding the ability of insureds and claimants to recover damages from insurers in excess of contractual remedies for so-called "bad faith" or allegedly unfair practices in handling and settling insurance claims.

WHEREAS, several other state legislatures have actively considered such legislation.^[1]

WHEREAS, such legislation frequently creates new or expansive private causes of action for first-party insureds and/or third-party claimants where none previously existed, and lowers viable and fair existing standards required to be met in order to bring a private action.

WHEREAS, any standard for "bad faith," whether statutory or at common law, should, at a minimum, reflect the ordinary and common-sense meaning of the term which includes an element of intentional or reckless insurer conduct.

WHEREAS, the majority of jurisdictions which allow a cause of action under common law or statute apply a reckless or intentional conduct standard to so-called "bad faith" insurer action.

WHEREAS, legislation which creates or heightens extra-contractual damages that are punitive in nature, such as a damages multiplier, regulatory penalty, interest penalty, or express provision to allow punitive damages, would be unfair and unreasonable where the insurer conduct was not malicious or otherwise intentional.

WHEREAS, legislation to provide additional penalties such as attorneys' fees, expert fees or court costs would be unfair and unreasonable where the insurer conduct was not malicious or otherwise intentional.

WHEREAS, legislation should not impose one-way attorney fee shifting.

WHEREAS, a strong presumption should exist that unjust insurer actions should and can be effectively remedied by the action of state regulatory authorities acting under and according to statutes passed by the legislature.

WHEREAS, state statutes and regulations already can and do establish procedures that provide necessary safeguards and remedies for the proper protection of insurance consumers.^[2]

WHEREAS, unwarranted expansion of insurer liability for bad faith and unfair claims practices through the creation of new or expansive tort causes of action can be expected to result in an unnecessary and significant increase in the frequency of

Did you know that Victor Schwartz-- a lawyer who represents companies in product litigation-- was the corporate co-chair in 2011?

litigation.

WHEREAS, unwarranted expansion of insurer liability for bad faith and unfair claims practices through the creation of new or expansive tort causes of action puts improper pressure on the claims settlement process, thereby hindering insurers' ability to detect, investigate and deny fraudulent claims, and potentially leading to the payment of meritless claims.^[3]

WHEREAS, unwarranted expansion of insurer liability for bad faith claims practices is likely to result in both larger damage payments and higher settlement values.

WHEREAS, the resulting increase in the volume of litigation, the payment of meritless claims, and unreasonably high damage awards and settlement values can be expected to produce costs that will inevitably be passed on to insureds and other consumers of insurance services.^[4]

THEREFORE BE IT RESOLVED that the American Legislative Exchange Council opposes insurer "bad faith" legislation that undermines or whose purpose is to undermine the settled law of contracts, expand the liability of insurers by creating new or expansive private rights of action, lower statutory standards required to bring actions, and/or provide for recovery of unwarranted extra-contractual damages.

BE IT FURTHER RESOLVED that the American Legislative Exchange Council supports efforts to improve the landscape of so-called "bad faith" laws through clarity in statutory standards and reduction of improper litigation or excessive awards, and strongly opposes legislation that would unreasonably and unfairly expand "bad faith" laws under principles set forth in this Resolution.

*Adopted by the Civil Justice Task Force at the Annual Meeting in July, 2009.
Approved by the ALEC Board of Directors in August, 2009.*

^[1] In 2009, bad faith bills were introduced in the following jurisdictions: Colorado (SB-103), Connecticut (SB-763), Florida (S-962), Georgia (HB-450), Iowa (SSB-1137), Maine (LD-1305), Montana (HB-345), New Mexico (SB-157), Nevada (AB-224), New Jersey (S-132), New York (A-3698), Oregon (HB-2791), Pennsylvania (SB-746), Rhode Island (H-5196), and Washington, DC (B18-103).

^[2] The National Association of Insurance Commissioners' model law governing insurance claim practices, which is adopted by the vast majority of state jurisdictions, states a clear intent for exclusive state regulatory enforcement by providing that the Act "is inherently inconsistent with a private cause of action." Unfair Claims Settlement Practices Act § 1, reprinted in Nat'l Ass'n of Ins. Comm'rs Model Laws, Regulations and Guidelines 900-01 (1991).

^[3] See *First-Party Insurance Bad Faith Liability: Law, Theory, and Economic Consequence*, National Association of Mutual Insurance Companies, at www.namic.org/insbriefs/080926BadFaith.pdf (finding evidence suggesting that "allowing tort liability for insurance bad faith results in reduced insurer incentives to challenge disputable claims, and in higher claims costs as a result").

^[4] See *The Impact of First-Party Bad Faith Legislation on Homeowners Insurance Claim Trends in Washington State: Interim Findings*, Insurance Research Council, April 2009 (estimating that bad faith legislation enacted in December of 2007 may have increased homeowners insurance claim costs in the first three quarters of 2008 by \$58 million).

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