

In These Times

Taking Stock

Unions join fight against offshore corporations.

By Lucy Komisar
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Trade unions, workers' pension funds and state officials are taking the lead in a campaign to prevent companies from reincorporating in Bermuda and other tax havens—and to bring back those who've already gone.

Arguing that offshore registrations allow corporations to evade taxes, reduce shareholder rights and threaten the security of investments, the AFL-CIO, individual unions and pension funds such as California's Public Employees Retirement System (CalPERS) are filing shareholder resolutions and going to court against companies that move their paper headquarters offshore, where corrupt corporate executives have an easier time cooking the books.

Connecticut Attorney General Richard Blumenthal said in congressional testimony last June: "We have learned from the Enron scandal the danger ... of shielding important corporate information from public scrutiny. The movement of corporations to a place where the legal rights of shareholders are severely constrained and confused—indeed at best unclear—is a matter of grave concern."



Tyco's "paper" headquarters are offshore.

In a "corporate inversion," a U.S. company creates a new parent corporation based in a tax haven like Bermuda. The company and any foreign subsidiaries become subsidiaries of the new parent—and the entire corporation then benefits from tax reporting and regulations that are often significantly less demanding and expensive than those in the United States. In the past few years, about two dozen publicly traded companies have reincorporated in Bermuda or announced they would do so.

In Bermuda, corporate laws shift the balance of control from stockholders to a company's directors and severely limit investors' right to sue. There is no treaty with Bermuda guaranteeing the reciprocity of judgments—meaning stockholders may have a hard time ensuring American court orders are enforced. In addition, stockholders'

ability to obtain information about Bermudan court decisions is limited: The island does not even maintain an official court reporter. “As long as companies incorporate offshore,” said William D. Crist, board president of CalPERS, “shareowners’ abilities to pursue their rightful legal remedies are frustrated.”

The AFL-CIO is taking aim at Tyco International, among other companies. Registered in Bermuda with real headquarters in New Hampshire, the union says the company “illustrates the risks for shareholders of incorporation in a jurisdiction that has severely restricted shareholders’ ability to pursue claims against officers and directors.”

The public employees union AFSCME has filed shareholder resolutions asking Tyco and two other companies, McDermott International and Ingersoll-Rand, to return to the United States. Ingersoll-Rand reincorporated in Bermuda, while McDermott chose Panama, another corporate tax haven. Votes on the resolutions will come in the spring.

CalPERS and the AFL-CIO are also targeting Nabors Industries, a huge, Houston-based operator of oil-drilling rigs. The union has filed a brief supporting an August 2002 shareholders class-action suit against the company; the suit is seeking an injunction to stop reincorporation and damages for breach of “loyalty, care and candor.”

The suit was initiated by Steve Rosenberg, described by his New York lawyer Lee Squitieri as “a normal businessman who blew his stack when he found out that the move to Bermuda would be a taxable event to him.” In order to continue owning stock in the company, shareholders must exchange their U.S. holdings to buy stock in the new offshore company and are required to pay capital gains taxes on the transaction. Squitieri says moving offshore will cost shareholders money and give executives big profits. “The director defendants are weakening shareholder rights to advance their own interests,” the suit declares.

Other unions are working on proposals involving two dozen other offshore companies. They include the Laborers International Union, which is also campaigning against Nabors, and UNITE, the textile workers union, which is targeting Cooper Industries, an electricity company.

Attacks on offshore holding companies are occurring at the state level as well. California state Treasurer Philip Angelides, who controls \$45 billion in state and local investment funds, has announced his state will no longer invest in 23 companies that have moved offshore. Investors have to act, Angelides said in November, because the “rudderless” federal regulatory system isn’t working. He will ask pension fund boards across the country to divest offshore stocks as well. “We have to stand up as

investors and owners,” Angelides said, “to enforce some discipline in the market, because no one else is going to do it.”

The AFL-CIO wants global companies to be registered in jurisdictions with real taxes and real corporate governance, says Damon Silvers, AFL-CIO associate general counsel. The International Confederation of Free Trade Unions is also looking at the issue of offshore registration.

Last November, as a result of public pressure, the Treasury Department issued regulations requiring companies that acquire offshore addresses to inform shareholders the change might require them to pay a tax. But since the elections, the Republicans have dropped the issue, even blocking attempts to withhold exemption from taxes on ersatz “foreign” profits or deny federal contracts to companies that move offshore.

Most ironic, perhaps, is a government that trumpets the joys of stock ownership while acting against the interests of ordinary shareholders—leaving trade unions to voice shareholder concerns.