FOURTH Quarter 2007

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## SUBPRIME MELTDOWN

**FEATURE 1**

Hedge funds are collapsing, lenders are being sued, companies are filing for bankruptcy, the government is looking into accounting irregularities and insider stock trades, and many Americans are losing their homes – all as a result of the subprime loan crisis. The subprime meltdown threatens investors and borrowers, businesses and markets.

Subprime loans are expensive loans made to borrowers who are deemed a high risk based on a poor credit history or a high debt-to-income ratio. These loans were relatively rare until the mid-1990s, when there was an upsurge in the practice of selling mortgage-backed securities to investors. Essentially, the mortgages are pooled together and resold as bonds, vastly increasing the amount of credit available.

The securitization of mortgages led to a rapid increase in the number and amount of subprime loans. By 2005, it was estimated that one out of every five loans issued was subprime.

The securitization process also introduced a number of new layers into a process which previously had been a relatively straightforward transaction between a lender and a borrower. Frequently the same party filled many of these intermediary roles – building conflicts of interest into the loan process.

For example, the investment banks that issue the mortgage-backed securities to investors also pay credit agencies to grade the assets they are selling. Perhaps unsurprisingly, the credit agencies consistently advised investors that mortgage-backed securities were safe investments.

In the midst of the superheated housing markets, many borrowers decided it was worth the risk to obtain a loan by any means necessary – based on the assumption that rising housing prices would outweigh the cost of an expensive loan. Built upon this precarious foundation, the market was unable to prevent a confluence of events, including a rise in short-term interest rates and a slowing housing market, from triggering a domino effect that led to widespread delinquencies, defaults and foreclosures.

Advocates for corporate reform, clean markets, and corporate transparency are now urging a thorough examination of the root causes that created the subprime crisis and new protections to prevent future fiascos. "Investors deserve independent analysis, uncorrupted by conflicts of interest," affirmed **Patrick Coughlin**, chief trial counsel in the *Enron* case.

"The inherent conflict of interest that exists when credit agencies grade their clients' securities is all too reminiscent of the conflicts that led to the debacles of Enron and WorldCom," said Coughlin, noting the disturbing similarities between the roots of the subprime meltdown and previous corporate looting. Coughlin and his firm have launched a task force to investigate the subprime disaster and have filed suit against the nation's largest lender, **Countrywide Financial Corp**.

However, shareholders in the various loan originators are not the only victims of this scandal. Most subprime loans were packaged into Mortgage Backed Securities, which were then in turn packaged into Collateralized Debt Obligations (CDOs). The CDOs were then sold to institutional investors, including public pension plans, Taft-Hartley Funds, and European and Asian Banks. These investors were willing to purchase the CDOs because many of them had investment-grade ratings, making them seem as safe as highly rated Corporate Debt. Because the CDOs are still not publicly traded, many institutional investors are not yet aware of the losses they have incurred on the investments, although many CDOs have been downgraded. Coughlin Stoia is working with experts in this area to be uniquely prepared to help institutional investors recover losses from those involved in packaging, promoting and selling these CDOs, based on their deception, breach of fiduciary duties and unjust enrichment.

In addition to numerous lawsuits brought by victimized investors, the subprime crisis is also the focus of government inquiries. At a recent House hearing on the subject, **Congressman Gary Ackerman** was sharply critical of the cozy relationship between the credit agencies and the banks: "Essentially, the originators and credit raters shoved enough pigs and laying hens in with the beef herd that investors expecting prime ribs on their silver platter and money in their pocket ended up with pork ribs on their paper plate and egg on their face."

*Abrams v. Countrywide Financial Corp., et al.*, No. CV07-05432-ODW (MANx) (C.D. Cal. 2007).

# NO GREEN LIGHT FOR MEXICAN TRUCKS



By a margin of 74-24, the Senate overwhelmingly passed the Dorgan Amendment, which would end funding for a NAFTA plan to allow Mexican long-haul trucks to freewheel across the border to any destination in the United States. The Department of Transportation had announced a pilot program, beginning in September, which would permit up to 100 Mexican trucking companies to begin rolling in the continental U.S., despite vocal opposition from environmental and labor groups.

Health and safety risks are key issues, according to attorney **Al Meyerhoff**, Of Counsel to Coughlin Stoia, who has followed the program since its inception.

"The Mexican trucking fleet is older – and far dirtier – than its U.S. (or Canadian) counterpart, and these older trucks do not meet tough new diesel requirements adopted in recognition of the severe threat diesel pollution poses – including increases in cancer, respiratory disease, asthma and premature death," said Meyerhoff. Indeed, according to Meyerhoff, trucks from Mexico put out 150% more smog and 200% more particulate matter than most modern U.S. trucks, and many still contain illegal devices which allow "dirty" trucks to cheat emissions inspections.

Opposition to the Mexican trucking program united a broad spectrum of political opinion, from the **Sierra Club** and **Public Citizen** to the **International Brotherhood of Teamsters** and highway safety groups. As the *Detroit Free Press* noted, "[N]o labor organization can command 74 Senate votes. There are legitimate larger issues. Mexican trucks are generally older than U.S. rigs and pollute the air more. Their drivers are not covered by U.S. limits on how long they can stay behind the wheel."

The amendment garnered support from both sides of the aisle. As reported by *Reuters*, Senior Pennsylvania Republican Senator **Arlen Specter** urged his Senate colleagues to support the trucking ban, advising, "We do not want to impede legitimate commerce, but safety is a very vital factor...." As if to affirm Senator Specter's safety concerns, on the second day of the pilot Mexican trucking program, a disastrous trucking accident occurred in Mexico, resulting in 30 deaths. Even *The Economist* agreed that "the tragedy hardly inspires confidence."

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## New Name, Same Unsurpassed Shareholder Advocacy

The law firm that has recovered more money for more institutional investors than all other firms combined is now named **Coughlin Stoia Geller Rudman & Robbins LLP**. Completing a long-anticipated transition, renowned plaintiffs' lawyer **William S. Lerach** has retired from the firm.

Coughlin Stoia is the number one securities firm – both in aggregate amount of dollars recovered and number of recoveries secured – according to a report by Institutional Shareholder Services. The firm's lawyers have been responsible for recovering more than $45 billion on behalf of clients – including an unprecedented $7.3 billion for the victims of the Enron fraud. "We will not pause in our ongoing advocacy for shareholders and consumers," said **Patrick Coughlin**, co-founder of the law firm.

Since its founding three years ago, Coughlin Stoia has grown by over 40%, totaling 180 attorneys, including dozens of former federal prosecutors, SEC attorneys, state prosecutors, and a former federal judge, and grown its client list to include 500 institutional investors – more than any other firm in the country. The firm's attorneys have been involved in 60% of the top 25 recoveries in U.S. history. Firm co-founder **Darren Robbins** said, "We are pleased that we remain the go-to law firm for institutional investors seeking to hold corporate wrongdoers accountable."

Lerach explained in a letter to his colleagues that the unmatched quality of the firm's attorneys allowed him to retire with knowledge that the firm's clients would experience stability and continuity in their legal representation. "It's been an honor to work with such an intelligent, ethical, and hard-working group of legal professionals," wrote Lerach. "I am enormously appreciative that your talents have provided me the opportunity to step away with complete confidence that this firm will continue to enjoy tremendous success while fighting for what's right."

The firm has offices in San Diego, San Francisco, Los Angeles, Boca Raton, Houston, Philadelphia, Washington, D.C., and two offices in New York. **Coughlin**, **Robbins**, **John Stoia**, **Mike Dowd**, **Helen Hodges**, and **Keith Park** continue to manage the firm's three West Coast offices and the firm's Houston office, while **Paul Geller** and **Sam Rudman** continue managing the firm's East Coast operations.

# Investor and Consumer Advocates Stop Corporate-Backed Attempt to Limit Class Actions

FEATURE 3

A coalition including the **Consumer Attorneys of California**, **Foundation for Taxpayer and Consumer Rights**, **Coughlin Stoia**, and other consumer, labor, investor rights and civil rights groups has forced a corporate lobbying group to withdraw its initiative designed to severely restrict California class actions.

The initiative was sponsored by the Civil Justice Association of California (CJAC), a lobbying organization consisting of multi-national corporations. In an attempt to avoid future accountability, the corporations, including semiconductor manufacturer **Intel**, filed an initiative that would have virtually eliminated the ability for investors and shareholders to recoup losses from corporate wrongdoers. The pro-investor, pro-consumer coalition responded swiftly and strongly, urging the corporate sponsors like Intel to withhold their financial support of the initiative. The response included online and television ads and resulted in tens of thousands of faxes sent to corporate directors asking them to withdraw the irksome initiative. While the coalition of pro-consumer and civil rights groups was rallying others to defeat the CJAC proposition, one of its corporate backers, Intel, revealed its true colors in a print ad for its DualCore product featuring a white man surrounded by six African-Americans bowing down. The ad ignited widespread furor, and civil rights groups were quick to respond, admonishing the chip maker: "You recently recognized how an advertising campaign misusing the images of African-American athletes was insensitive and deserved to be withdrawn. We hope you will again thoughtfully respond by recognizing the unintended consequences of CJAC's proposed initiative and withdraw it."

The coalition also filed response initiatives to hold corrupt corporations accountable, including the *Corporate Accountability Act* to take away any illegitimate pay and investment income from executives who are convicted of corporate fraud, and the *No Say No Pay Act* to require publicly traded companies to release information about the pay for top executives, allow stockholders in those companies to vote on compensation levels for top executives, and allow shareholders to file class action lawsuits against executives and board members if executive pay and benefits are approved – or pay is altered – without shareholder approval.

The corporate-lobbying group quickly backed down and abruptly asked the state Attorney General to withdraw the CJAC initiative. The pro-investor, pro-consumer initiatives remain in the process and may ultimately appear on the California ballot. "Our political response has sent a strong message to those corporations who violate the law, then seek to evade accountability through the political system," said Coughlin Stoia partner **Timothy Blood**, who led the firm's efforts to defeat the ballot initiative.

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## TIMOTHY G. BLOOD
## CONSUMER ATTORNEY OF THE YEAR FINALIST

Coughlin Stoia, best known as the leading securities litigation firm in the country, is also at the forefront of many of the nation's most significant consumer actions. Reflective of their strong consumer practice, Coughlin Stoia attorney **Timothy G. Blood**, a leader in the firm's consumer division, was recently selected by the Consumer Attorneys of California as a finalist for the prestigious Consumer Attorney of the Year Award.

Blood, a partner in the firm's San Diego office, settled the landmark Farmer's Insurance case near the conclusion of trial. Blood's work on the case was singled out because of his tenacity and creativity, including the use of a new legal theory that avoided the pitfalls of past cases on behalf of victimized consumers facing a powerful adversary.

"Tim's innovative trial strategy and his determination against a defendant with tremendous resources makes him a well-deserved finalist for the Consumer Attorney of the Year," said **John Stoia**, who directs the firm's consumer practice.

On behalf of a nationwide class of plaintiffs, Blood held that certain "non-OEM crash parts" (generally the sheet metal exterior of a car or truck not made by, or for, the vehicle's original maker) did not meet the quality standards required by Farmers' insurance policies. In addition, plaintiffs claimed that Farmers breached its insurance policies by using those parts to determine how much money to pay on an insurance claim.

*Timothy G. Blood*

Although other plaintiffs had unsuccessfully sued insurance companies for similar breach of contract claims that required proving that each replacement part was inferior, Mr. Blood cast the cases differently. He successfully argued that Farmers' claims adjustment practices were defective, which meant that he did not have to look at each and every replacement part, and instead focused on the company's policies.

The settlement, reached at the very end of trial, provided cash payments to Farmers' customers between June 15, 1996 and November 1, 2006 who were insured by Farmers Insurance Exchange, Mid-Century Insurance Company, and other entities affiliated with Farmers. Class members now have a full warranty on non-OEM replacement auto parts for as long as they own their car or truck. Finally, the settlement also mandates that Farmers adopt wide-ranging reforms in the way it adjusts claims.

*Remigio Lebrilla, et al. v. Farmers Group, Inc.*, No. 00-CC-07185 (Cal. Super. Ct., Orange County).

# *WorldCom* Opt Outs Win Reversal of District Court Opinion Restricting *American Pipe* Tolling

**FEATURE 4**

In its landmark *American Pipe* decision and in two subsequent cases, the Supreme Court held that the filing of a class-action complaint suspends or "tolls" the running of the statute of limitations – the window within which a plaintiff must file suit – for all members of the class, who may then choose to opt out and file their own actions if they wish.

But when dozens of large institutional investors chose to opt out of the *WorldCom* securities class action in order to pursue their own claims, the district judge presiding over the case didn't like it. Judge Denise L. Cote of the United States District Court for the Southern District of New York ruled that WorldCom investors who filed their own cases *before* she had ruled on a motion for class certification in the *WorldCom* class action could not rely on the Supreme Court's tolling precedents. Judge Cote then dismissed many claims as untimely filed.

Had the WorldCom investors waited to file the claims until *after* her ruling certifying a class action, Judge Cote explained, their claims would have been timely. She reasoned, in substance, that the investors' claims *were filed too late* to satisfy the statute of limitations, *because they were filed too soon.* This conclusion was, she said, somehow justified by "policy" considerations supposedly underlying the Supreme Court's decisions.

Before Coughlin Stoia attorneys could perfect and prosecute an appeal, the United States Court of Appeals for the Sixth Circuit issued an opinion that quoted and adopted the operative portions of Judge Cote's opinion. Judge Cote's decision could still be appealed, of course, to the Second Circuit Court of Appeals. But many observers concluded that Coughlin Stoia lawyers faced an uphill battle – trying to persuade the Second Circuit to reverse a decision that the Sixth Circuit had expressly endorsed, and that was being applied and followed by district judges across the country.

On July 26, however, the Second Circuit did just that – holding that the "filing of a class action tolls the statute of limitations for all members of the asserted class, regardless of whether they file an individual action *before* resolution of the question whether the purported class will be certified." The Second Circuit continued, "We agree with the Appellants that their time to file should have been tolled upon the filing of a class action purporting to assert their claims, regardless of their having also filed individual actions asserting the same claims."

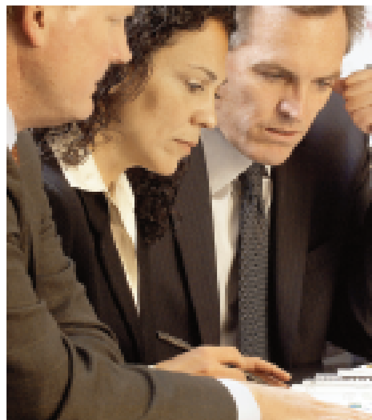
The Second Circuit explained that "the Supreme Court has repeatedly stated that 'the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action....' We see no reason not to take this statement at face value.... We hold that because Appellants were members of a class asserted in a class action complaint, their limitations period was tolled under the doctrine of *American Pipe* until such time as they ceased to be members of the asserted class, notwithstanding that they also filed individual actions prior to the class certification decision."

By the time the Second Circuit held that Supreme Court precedents mean what they say, and that lower courts are bound to follow them, most of the claims affected by Judge Cote had been settled – and on remarkably favorable terms. But a single underwriter refused to settle, and with the Second Circuit victory, an additional incremental recovery may be expected.

As a postscript, it should be noted that roughly two weeks after the Second Circuit ruled, the Ninth Circuit in the *Hanford Nuclear Reservation* case issued an opinion going the other way – citing and following the very district court opinion that the Second Circuit had reversed, as though it remained good law. Coughlin Stoia lawyers immediately filed an *amicus curiae* brief on behalf of the **California Public Employees' Retirement System**, pointing out the reversal and supporting a petition for rehearing in the Ninth Circuit.

Coughlin Stoia partner **Eric Alan Isaacson**, who both argued the Second Circuit *WorldCom* appeal and framed the *Hanford amicus* brief, remarked that "it's very important that opt outs be able to know when they can sue. The Second Circuit followed the clear rule laid down in the Supreme Court's decisions that the limitations period is tolled for ***all*** members of the class. It's a shame the Ninth Circuit followed bad law – but we can reasonably hope that the court will correct its mistake."

*In re WorldCom Sec. Litig.,* No. 05-6979-cv, Opinion (2d Cir. July 26, 2007); *In re Hanford Nuclear Reservation Litig.,* No. 05-35648, Opinion (9th Cir. Aug. 14, 2007).

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## *Motion to Dismiss* Abercrombie Marked Down

The case against clothier Abercrombie & Fitch for allegedly hiding its markdown risk from investors continues after a federal judge in Ohio rejected the company's attempt to have the case thrown out. Plaintiff **City of Dearborn Heights Act 345 Police & Fire Retirement System** alleges that defendants misled investors about Abercrombie's financial performance from June 2 through August 16, 2005 by concealing the fact that its gross margin was declining materially during its second fiscal quarter of 2005. Defendants, which include the company's CEO, CFO, and three directors of the Board, also allegedly concealed the fact that they had abandoned Abercrombie's previously stated business strategy by engaging in unprecedented volumes of promotional sales and markdowns. According to the complaint, defendants also misled investors to believe that sales of denim and jeans, Abercrombie's most popular products, remained strong, when the company was actually slashing denim prices, giving it away to store employees, and marking it down to discount retailers. The promotions and markdowns improved Abercrombie's sales numbers, but also materially reduced its gross margin by 180 basis points from the prior year, a fact defendants did not disclose until the end of the class period.

Defendants' reports of strong sales inflated Abercrombie's stock price from under $58 per share to an all-time high of $74 on July 7, 2005. Suspiciously, between June 2 and July 15, 2005, the Abercrombie individual defendants dumped 1.9 million of their own shares for total insider gains of $137 million. Then, on August 16, 2005, defendants reported that Abercrombie's gross margin had declined by 180 basis points during its second fiscal quarter, its inventory had piled up, and its second quarter earnings were consequently well below consensus estimates. Abercrombie's stock price fell from a high of over $63 on August 16, 2005, to as low as $56 the next day – a one-day decline of over 10% and a 23.5% decline from its class period high. The SEC commenced a formal investigation of the company a few months later.

Defendants moved to dismiss the complaint, arguing that it did not adequately plead defendants' *scienter* and loss causation, that defendants' nondisclosure of monthly gross margins was not actionable, and that they could not be liable for analysts' estimates of the company's quarterly gross margin. The Honorable Edmund A. Sargus, Jr., of the United States District Court for the Southern District of Ohio, rejected all three of defendants' arguments.

The court held that the complaint more than adequately pleaded loss causation, *i.e.*, that defendants' misrepresentations and later disclosures caused plaintiffs' and the class' losses, clearly rejecting defendants' argument that because the complaint did not allege that the stock price decline at the end of the class period was caused by a correction or disclosure of a specific misrepresentation made by them, and because their class period sales reports were accurate, there was no loss causation. The court made clear that plaintiffs need not specify corrective disclosures causing a stock price decline "'where [they] allege that the subject of the misrepresentations and omissions caused their losses....'"

Additionally, the court held that defendants could be directly liable for providing false or misleading information to analysts regardless of the "entanglement theory," which holds that officers and directors must expressly approve an outside analyst's statements to be liable for them. Because defendants "made misleading statements by failing to provide a full and accurate picture of company performance," which in turn misled analysts, they did not have to express their approval of the analysts' gross margin estimates to be liable for them.

*Ross v. Abercrombie & Fitch Co.*, *et al.*, No. 2:05-CV-819, 2007 WL 2284477 (S.D. Ohio Aug. 9, 2007).

## *Motion to Dismiss* Every Second Counts

The California Court of Appeal in Los Angeles recently issued a significant decision on California's overtime laws. In a case litigated for six years by Coughlin Stoia attorneys, a class of claims adjusters working for Liberty Mutual Insurance Company and Golden Eagle Insurance Company sued their employers under California law to recover unpaid overtime. The adjusters argued that they had wrongfully been classified as "administrative" employees, exempt from the general legal requirement to receive overtime compensation. According to the defendant insurance companies, their claims adjusters had a "managerial" role in the business, and therefore were not entitled to overtime compensation. For legal support, the insurers relied primarily upon federal law that was less protective to workers than California State law.

Siding with the plaintiffs, the appellate court ruled that the claims adjusters had a day-to-day role in the insurance company that did not rise to the level of an administrative or managerial role. The court also held that the employees could join forces in a class action to recover overtime compensation, rather than suing individually. The court rejected the insurers' invitation to adopt non-binding federal law. The insurers are expected to petition the California Supreme Court to review the decision, although such petitions are rarely granted.

"This is a major victory for California workers," commented **Kevin K. Green**, the Coughlin Stoia partner who briefed and argued the case on appeal. "The court recognized that the California regulations are intended to level the playing field between employers and employees, and that California does not march in lockstep with federal law."

*Harris v. Superior Court*, 154 Cal. App. 4th 164 (2007).

For more information on these and other cases, check out our website at csgrr.com

## *Motion for Lead Plaintiff*
## Point. Click. Fraud?

Federal district court Judge Christina A. Snyder has appointed the **Pension Trust Fund for Operating Engineers** and **Pompano Beach Police & Firefighters' Retirement System** as co-lead plaintiffs in a securities fraud class action filed against Yahoo! in Los Angeles, California.

Lead plaintiffs will seek recovery of more than $6.8 billion in market losses incurred as a result of Yahoo!'s senior executives' allegedly false and misleading statements to the investment community concerning the source of the company's "record" financial results reported between April 8, 2004 and July 18, 2006. Cashing in on the resulting inflation in Yahoo!'s stock price – and the use of billions of dollars of company funds to repurchase Yahoo! stock on the open market – Yahoo!'s senior executives simultaneously dumped more than 30 million shares of their own Yahoo! stock back into the open market, reaping over a billion dollars in proceeds. Yahoo! and its investment banker also sold $750 million of zero-coupon convertible notes at inflated prices tied directly to the market price of Yahoo!'s stock.

As has since come to light, however, Yahoo!'s ill-gotten fortunes derived from a practice of illicitly charging business customers premium "advertising" rates by forcing ads on unsuspecting internet users through unintended links and annoying pop-up ads. The practice – colloquially dubbed "click fraud" – has come under intense scrutiny and landed Yahoo! in a heap of legal trouble, including having to defend multiple class actions brought on behalf of the company's defrauded advertising customers who are now demanding hundreds of millions of dollars in refunds.

Coughlin Stoia lawyer **Tricia McCormick** successfully defeated defendants' challenge to the appointment of lead plaintiffs. In rejecting defendants' arguments, the court held that the PSLRA "requires only that any such [lead plaintiff] group 'fairly and adequately protect the interests of the class.'" Judge Snyder granted lead plaintiffs' motion, opening the door for them to move forward with the prosecution of this important case.

*Brodsky v. Yahoo! Inc., et al.*, No. 2:07-CV-03125-CAS-FMO, Civil Minutes (C.D. Cal. Aug. 20, 2007).

## *Motion to Dismiss*
## Ex-Scrushy-ating

HealthSouth Corporation is the nation's largest provider of outpatient surgery and rehabilitative healthcare services. Its founder and former CEO, Richard Scrushy, envisioned HealthSouth as the "Wal-Mart of outpatient rehabilitation clinics." By the late 1990s, with consistently high revenue and earnings growth rates and a seemingly flawless acquisition strategy, HealthSouth appeared well on its way to that goal with 1,800 clinics and hospitals in all 50 states. As far as investors knew, HealthSouth represented the best of both worlds in the rapidly evolving world of corporate managed care – a highly successful, for-profit managed care provider that did not sacrifice the quality of patient care – until March 18, 2003, when a fraud SWAT team executed a search warrant at the Birmingham, Alabama offices of HealthSouth and exposed one of the largest and most pervasive accounting and Medicare frauds in the history of U.S. healthcare. The next day, the SEC filed actions against HealthSouth and its CEO Scrushy. Within weeks, the New York Stock Exchange halted trading in HealthSouth stock indefinitely and the stock plunged to $0.10 per share. Scrushy, other high-level HealthSouth executives, as well as HealthSouth's auditor, Ernst & Young LLP, were fired. Investment bank UBS Warburg fired its analyst for HealthSouth. Other key UBS personnel resigned. Sixteen former HealthSouth executives pled guilty in related federal criminal prosecutions (a new record), and many are presently incarcerated in federal prison for their roles in the deception, although a Birmingham jury acquitted Scrushy on all 85 counts of wrongdoing, including conspiracy, multiple counts of securities fraud, mail fraud and money laundering.

For nearly a decade, HealthSouth, UBS and Ernst & Young co-engineered a fraudulent scheme to falsify HealthSouth's financial statements in order to meet and exceed Wall Street expectations which were, in fact, projections disseminated by HealthSouth, UBS, and other banks involved in the scheme. To create the impression of continued growth at high rates, defendants "fixed" earnings shortfalls through false accounting entries, which totaled close to $2.7 billion by the end of 2002. UBS and Ernst & Young not only knew of the accounting fraud, but were willing collaborators in the scheme.

In the aftermath of the criminal prosecutions, class action suits were brought on behalf of all persons who purchased HealthSouth common stock or options between April 24, 1997 and March 18, 2003, or acquired bonds, notes, or other debt instruments between July 30, 1999 and March 18, 2003.

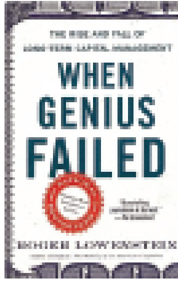
In January, led by attorneys **Patrick Coughlin**, **Jonah Goldstein** and **Debra Wyman** of Coughlin Stoia, co-lead plaintiffs obtained a landmark settlement of $445 million from HealthSouth and certain of its former directors and officers. A product of nearly four years of hard-fought litigation, the settlement represents one of the largest of its kind in securities class action history and is considered among the top 15 settlements achieved after passage of the Private Securities Litigation Reform Act of 1995.

It's not over yet. Led by the Coughlin Stoia team, which now also includes attorneys **John Rice** and **James Caputo**, co-lead plaintiffs continue to prosecute vigorously complex civil actions against remaining defendants, including Scrushy, as well as UBS AG and Ernst & Young for their participation in the scheme to defraud HealthSouth investors. Coughlin Stoia attorneys are aggressively marshalling the evidence required to bring justice to the victims of HealthSouth and its co-conspirators' egregious fraud.

*In re HealthSouth Corp. Sec. Litig.*, No. CV-03-BE-1500-S (N.D. Ala.).

*Continued on page 7*

# Recommended Reading




## When Genius Failed: The Rise and Fall of Long-Term Capital Management

Roger Lowenstein
(Fourth Estate, 2002)

In September 1998, the New York Federal Reserve Bank invited the heads of every major Wall Street bank, the chairman of the New York Stock Exchange, and representatives from numerous European banks to a secret meeting. The purpose: to create a consortium to fund a private bail-out of a multi-billion dollar hedge fund that had suddenly gone pear-shaped, hemorrhaging huge losses. The exposure of this hedge fund, Long-Term Capital Management, to complicated and intertwined derivatives risks threatened the destabilization of the entire stock market and the potential collapse of a number of banks.

*When Genius Failed* traces the story of the rise, hubris, and fall of Long-Term Capital Management. In the late 1990s, as they are today, hedge funds were the *ne plus ultra* of investments: discreet, private investment groups limited to an überwealthy clientele, and LTCM was the wunderkind of them all, with its Nobel Laureate and math professors smirking at conventional Wall Street bond traders. Hedge fund managers promised that the investors' money would be placed in a variety of trades simultaneously – a "hedging" strategy designed to minimize the possibility of loss. What was unclear to investors was just how these hedge funds worked their magic. By trading in unstable risky derivatives, even small fluctuations in stock price could result in runaway downside losses of billions of dollars.

Lowenstein's book is a timely look back on a topical subject: the triumph of arrogance over common sense. As the shockwaves from the subprime mortgage fall-out ripple across today's investosphere, history may be primed to repeat itself.

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## *Motion for Summary Judgment* Privacy: SD Poor Can't Afford It

The Ninth Circuit Court of Appeals dealt a blow to privacy rights of the needy in *Sanchez v. County of San Diego* by approving San Diego County's policy of sending law-enforcement agents to go through the homes of every applicant for public assistance, and then denying a rehearing, over the dissent of eight of the court's judges.

Coughlin Stoia, in conjunction with a former acting Solicitor General of the United States, is now seeking Supreme Court review. The *Sanchez* action, filed by Coughlin Stoia, was brought to vindicate the privacy rights of all citizens – including the poor – and also to protect San Diegans from unnecessary and baseless injuries to their reputations. San Diego appears to be California's only county requiring individuals who apply for public assistance to feed their children to submit to intrusive and warrantless searches conducted by government agents. Agents show up at the homes of the applicants unannounced and conduct a search – snooping through bedroom closets, dresser drawers, bathroom medicine cabinets, and even garbage pails and dirty laundry – looking for evidence of ineligibility for public assistance and possible fraud. Stunningly, failure to comply with the County's search demand results in denial of public assistance to the entire family.

Agents also pursue "collateral contacts" in their quest to find evidence of ineligibility, and interrogate applicants' employers and neighbors after identifying themselves only as "Public Assistance Fraud Investigators." Agents fail to mention that they have no reason to suspect fraud or ineligibility by the applicants. As a result, many employers and neighbors naturally assume the worst – harming the reputations of the innocent.

When the United States Court of Appeals for the Ninth Circuit issued an opinion affirming the district court's decision last fall, Judge Raymond C. Fisher's dissenting opinion blasted the two-judge majority for "suggesting that welfare applicants may be treated the same as convicted criminals...." A petition for rehearing by the full court was denied on April 16, with eight judges publicly dissenting from what Judge Harry Pregerson characterized as an "unprecedented blow at the core of Fourth Amendment protections." Pregerson observed that only the poor have to put up with such invasions of privacy, and noted that the "government does not search through the closets and medicine cabinets of farmers receiving subsidies," or "dig through the laundry baskets and garbage pails of real estate developers or radio broadcasters."

The Ninth Circuit's decision was sharply criticized in the pages of *The New York Times* and the *Harvard Law Review*, and was lampooned by Stephen Colbert on *The Colbert Report* in commentary that portrayed the decision as allowing protection for fundamental constitutional rights to turn upon a citizen's income.

The Supreme Court is expected to decide this fall whether it will hear the case.

*Sanchez v. County of San Diego*, 464 F.3d 916 (9th Cir. 2006); rehearing denied with eight judges dissenting, 483 F.3d 965 (9th Cir. 2007).

# Calendar of Upcoming Events

## October 5, 2007

**Case Western Reserve University School of Law Center for Business Law and Regulation – Federalist Society**

**Symposium: "Scheme Liability, Section 10(b), and *Stoneridge Investment Partners v. Scientific-Atlanta*"**

*Case Western Reserve University School of Law*
*Cleveland, Ohio*

Featured Speaker: **Eric Alan Isaacson**, Coughlin Stoia Geller Rudman & Robbins LLP

This symposium will consider the case of *Stoneridge Investment Partners v. Scientific-Atlanta, Inc.*, scheduled for argument before the United States Supreme Court on October 9, which will address whether primary liability under § 10(b) covers parties who engage, with a public corporation, in a scheme of deceptive transactions in order to generate phony revenues or hide debt on the corporation's books.

For more information, visit: www.law.cwru.edu/lectures

## October 5, 2007

**Southern Methodist University**
**15th Annual SMU Corporate Counsel Symposium**

*Omni Mandalay Hotel at Las Colinas*
*Dallas, Texas*

Featured Speaker: **Patrick Coughlin**, Coughlin Stoia Geller Rudman & Robbins LLP

This symposium consists of presentations from attorneys, general counsel, academics, and judges, and covers a wide range of topics, including the most current issues in corporate law.

For more information, visit:
www.smu.edu/lra/Symposia/CCS/Overview.asp

## October 9-10, 2007

**C5**
**2nd Annual Forum: D&O Liability Insurance**

*InterContinental Cologne*
*Cologne, Germany*

Featured Speaker: **Michelle Ciccarelli**, Coughlin Stoia Geller Rudman & Robbins LLP, "*Sturmisch oder Klar*: Are You at Risk?"

This forum evaluates D&O policy structures, confronts the practical problems involved in the provision of global policies, and assesses the risk to European D&O insurers of class actions.

For more information, visit: www.c5-online.com

## October 12, 2007

**Palm Beach County Bar Association**
**Bench Bar Conference**

*Palm Beach County Convention Center*
*Palm Beach, Florida*

Attorney Panelist: **Paul Geller**, Coughlin Stoia Geller Rudman & Robbins LLP

The conference will focus on the level of professionalism before the court and serves as a forum for airing complaints about the practices of judges and lawyers.

For more information, visit: www.palmbeachbar.org

## October 15-16, 2007

**Practicing Law Institute**
**Securities Litigation & Enforcement Institute 2007**

*PLI California Center*
*San Francisco, California*

Featured Speakers: **Patrick Coughlin** and **Darren Robbins**, Coughlin Stoia Geller Rudman & Robbins LLP

Leading practitioners, SEC officials, federal prosecutors and judges will discuss case law, enforcement initiatives, emerging trends, and breaking developments.

For more information, visit: www.pli.edu

## October 19, 2007

**American Bar Association**
**Signs of Unexpected Volatility: Securities Class Certification Standards on the Move**

*The Fairmont Chicago*
*Chicago, Illinois*

Featured Speaker: **Ramzi Abadou**, Coughlin Stoia Geller Rudman & Robbins LLP

This conference will address recent developments in class certification motions in securities cases, the certification of nationwide classes and how CAFA has changed class-action practice.

For more information, visit: www.abanet.org

## October 19, 2007

**Los Angeles County Bar Association**
**40th Annual Securities Regulation Seminar**

*Millennium Biltmore Hotel*
*Los Angeles, California*

Featured speaker: **Patrick Coughlin**, Coughlin Stoia Geller Rudman & Robbins LLP

This seminar includes an overview of judicial, regulatory, and enforcement developments, and will also cover trends in the public and private sectors of securities, mergers and acquisitions, and other matters of interest in the securities bar.

For more information, visit: www.lacba.org

## November 4-7, 2007

**International Foundation**
**53rd U.S. Annual Employee Benefits Conference**

*Anaheim Convention Center*
*Anaheim, California*

This conference is addressed to the specific needs of multi-employer plan trustees and others who provide services or are involved in the overall management and administration of benefit trust funds.

For more information, visit: www.ifebp.org

## December 8-11, 2007

**Institute for International Research**
**The 16th Annual Public Fund Boards Forum**

*The Westin St. Francis Union Square*
*San Francisco, California*

This forum educates trustees and staff of the public fund community, provides solutions for closing the funding gap for public funds and investigates alternative investment strategies.

For more information, visit: www.iirusa.com

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