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CORPORATE GOVERNANCE BULLETIN

COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP

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(800) 449-4900
www.csgrr.com

INSIDE:

FINANCIAL FORCES RUN AMOK

FEATURE 1

Without regulation, the invisible hand of the market is robbing us blind.

Our nation has been traveling the deregulation highway, a road with no rules or direction. We have let enterprise be free, business go unfettered, the good times roll. And roll they have, but to where? One stopping point: the current mortgage crisis.

Recently, there has been a slight regulatory bump in the road. After its chairman acknowledged that "market discipline has in some cases broken down," the Federal Reserve released new mortgage lending rules "to protect consumers against fraud [and] deception." Banks making subprime loans will be required to actually consider the borrower's ability to pay and confirm a borrower's income before handing over the money. Now *there's* a radical notion.

"A declawed SEC, a neutered plaintiffs' bar and missing congressional oversight empowered Wall Street to push as far as it could. . . . The current subprime mortgage mess is simply the latest wreck on the highway."

Disclosure will also be required of those nasty little (actually not so little) "bonuses" that brokers receive for writing loans at rates higher than a poor, unwitting consumer can afford. To some, that may not be much, but the absence of such rules encouraged the predatory lending practices that have left millions of Americans facing foreclosure.

Let's take a look at how we got here before the deregulation highway takes us over a cliff. The Reagan revolution was the beginning, when we started seeing rollbacks in government safeguards, such as those protecting food, drinking water and the environment. Then came the savings and loan crash in the '80s, a pit stop that cost taxpayers $150 billion. President Clinton added the "bridge to the 21st century," along with his proclamation that the "era of big government was over." During his administration, Congress repealed a Depression-era law called the Glass-Steagall Act, which kept banking and investment separate. Henceforth, banks could offer investment advice as well as loans – one-stop shopping on the road to disaster.

Deregulation of the markets really took hold in 1994 with the GOP's "Contract with America." The first to go were the nation's securities laws. Overwriting a Clinton veto, Congress enacted the Private Securities Litigation Reform Act of 1995, making it far more difficult to prove securities fraud. Said to be necessary to free the markets of red tape and trial lawyers, it gave the green light to corporate chiefs such as Ken Lay and Dennis Kozlowski and led to the Enron, WorldCom, Tyco and HealthSouth fraud debacles. Shareholders lost hundreds of billions of dollars from a wave of fraud unseen since the Roaring '20s – and maybe not even then.

A declawed SEC, a neutered plaintiffs' bar and missing congressional oversight empowered Wall Street to push as far as it could. Facts were hidden, self-dealing was rampant and deceit rewarded. Congress finally intervened in 2002 by passing the Sarbanes-Oxley Act, imposing strict new accounting rules and other controls on business. That law is now under siege.

The current subprime mortgage mess is simply the latest wreck on the highway. Banks have been left to their own devices, unchecked by government watchdogs or pesky regulations. Interest rates on millions of mortgages are set – like time bombs – to accelerate in 2008. Defaults of $1 trillion are predicted – affecting not only large institutions such as pension funds, hedge funds and universities but also countless average Americans.

It is time – it is past time – to get off this deregulation highway. We need more government, not less, to protect us against banks and conglomerates and the sheer concentration of power they portend.

Change, it is said, is in the wind. There is no better place to start than reining in the robber barons of the 21st century.

(A similar article written by **Albert H. Meyerhoff**, Of Counsel at Coughlin Stoia Geller Rudman & Robbins LLP, appeared in the *Los Angeles Times*.)

Subprime Investor Losses: Coughlin Stoia Takes Action

FEATURE 2

Investors have been feeling the pain of the enormous losses in mortgage-backed securities, many of which were heavily exposed to subprime mortgage defaults. The worst may be yet to come.

In late 2007, Citigroup and Merrill Lynch both announced losses of over $8 billion due to exposure to risky investments – and the market sharply discounted the value of both banks' stock. As losses continue to mount, a number of investors are actively pursuing litigation against the institutions which issued and sold these mortgage-backed derivative investment vehicles (often referred to as collateralized debt obligations, or "CDOs"). Coughlin Stoia is at the helm of several of these shareholder derivative and class actions.

Rumblings of an imminent collapse in the CDO market began early last year, as loan delinquencies and defaults began to rise in response to the cooling of the over-heated housing market. As homeowners began to default on rising payments due on subprime or adjustable-rate mortgages, the value of the pooled securitized mortgage instruments in turn is collapsing. The result has been a plunge in the value of mortgage-backed securities and CDOs, with write-downs of $80 billion worldwide in 2007. A leading business periodical estimated that subprime defaults would reach a level between $200-$300 billion. The fiasco has seen the capitalization of trusted companies like bond insurer Ambac Financial Group, Inc. evaporate, and its suspected malfeasance has led to subpoenas issued from the Massachusetts State Attorney General.

As officials from the FBI and SEC begin to conduct their own investigations into the lending and securitization debacle, a team of senior partners at Coughlin Stoia have already initiated numerous class-action lawsuits against the financial institutions that packaged and sold subprime mortgage-backed securities, alleging violations of the Securities Exchange Act. As Coughlin Stoia partner **Samuel Rudman** explained to the *New York Law Journal*, "In many cases, CDOs and mortgage-backed securities were overvalued and their risks were not sufficiently disclosed to investors. In fact, some of the companies that packaged mortgage-backed securities into CDOs, and others associated with their sale, did not disclose that a large number of the underlying mortgages were issued to some of the least credit-worthy borrowers . . . . As a result, the securities are no longer marketable at prices anywhere near the prices paid by investors because the securities lost, or will soon lose, their [AAA] credit rating."

Attentive investors have filed suits against Citigroup, Merrill Lynch, Washington Mutual, Ambac, Countrywide Financial, the Federal Home Loan Mortgage Corporation ("Freddie Mac"), Huntington Bancshares, UBS AG and a host of other institutions. The fallout of the subprime deception has led, in short order, to the hasty retirement of several CEO's including Merrill Lynch's Stan O'Neal, Citigroup's Charles Prince and Angelo Mozilo of Countrywide. Incredibly, *The Sydney Morning Herald* revealed that at the same time the devastating financial news was announced in late 2007, the executives of the seven largest Wall Street banks, many of them implicated in the financial frauds, awarded themselves a net total of $33 billion in bonuses for the year.

Coughlin Stoia intends to aggressively pursue litigation on behalf of defrauded investors.

Tellabs Decision Is Good News for Plaintiffs

A recent decision handed down by the Seventh Circuit Court of Appeals panel has clarified the court's view of the standards for establishing *scienter* and Judge Richard A. Posner's order is considered a "win" for investors and the plaintiffs' bar alike.

A major challenge in successfully prosecuting a securities-fraud allegation is establishing that the defendants *knew* that they were committing fraud, often referred to in legal terms as *scienter*, or having a fraudulent mindset.

In his order, Judge Posner reaffirmed the vitality of the "core product" doctrine and held that Tellabs' key telecommunications products contributed to a strong inference of *scienter*. While the court considered the opposing inference – that defendants' misstatements resulted from innocent mistakes – the sheer importance of these products to Tellabs' fortunes made that suggestion "exceedingly unlikely."

Also noteworthy was that Tellabs' CEO did much of the talking: "And at the top of the corporate pyramid sat [Richard C.] Notebaert, the CEO. . . . Almost all the false statements that we quoted emanated directly from him." Judge Posner considered whether it was conceivable that a CEO was unaware of problems roiling his company's main products, and ultimately opined that such a result was "exceedingly unlikely." The CEO's position, coupled with the important nature of the products and his statements concerning them, bolstered a strong inference of the requisite *scienter*.

Securities-fraud defendants often protest that there can be no *scienter* associated with their actions because they didn't actually profit from the alleged fraud; *i.e.*, they didn't sell their company's inflated stock, or reap unusual bonuses. *Tellabs* defendants argued that any *scienter* inference was undermined because: (1) there was no indication that anyone at the company profited from the fraud; and (2) within months they had acknowledged the mistakes concerning the prospects for their core products.

The *Tellabs* panel was unimpressed, stating that defendants' argument "confuses expected with realized benefits." Moreover, even if the company's CEO thought the situation might eventually right itself, that in itself could comprise a relevant benefit: "[T]he benefits of concealment might exceed the costs."

All in all, *Tellabs* contains several gems that defrauded investors and their counsel can put to good use in current and future recovery actions.

Makor Issues & Rights, Ltd. v. Tellabs, Inc., No. 04-1687, 2008 U.S. App. LEXIS 975 (7th Cir. Jan. 17, 2008).

BP Shareholders Force Major Governance Reforms

FEATURE 3

A coalition of shareholders have won major corporate governance improvements in the settlement of a shareholder action brought over the string of major safety environmental and operating disasters that have plagued BP, formally British Petroleum, the third largest global energy company.

The shareholder derivative action, filed in Alaska state court in October 2006, alleges negligent and intentional breach of fiduciary duties and waste of corporate assets by BP's senior executives and Board of Directors by failing to properly fund and oversee safety and maintenance at BP's U.S. operations. Representing shareholders in the action are **UNITE HERE National Retirement Fund**, representing American Depository Receipt holders; **The London Pensions Fund Authority**, a leading public fund in the U.K. representing common shareholders; and Jeffrey Pickett of Anchorage on behalf of BP Plc, BP America, Inc., BP Oil Company and BP Exploration (Alaska) Inc. ("BP").

BP, a British energy company with global operations, admitted that its own operational oversight deficiencies contributed to a 2005 Texas City Refinery Explosion (resulting in over 15 deaths, over 170 injuries and the shutdown of the plant), the 2006 Prudhoe Bay Oil Spill (resulting in the discharge of over 200,000 gallons of oil and a temporary shutdown of most of BP's Alaska pipeline), and propane market price-fixing. In addition to making these admissions, BP agreed to pay $373 million in fines.

The settlement provides for significantly improved corporate governance and oversight at BP's worldwide operations, especially those in the U.S. BP also agreed to withdraw a portion of ex-CEO Lord John Browne's multimillion-dollar severance package and implement unprecedented reforms in tying executive compensation to the company's health and safety record.

The terms reached in the settlement require BP to: (1) hold annual meetings with members of the 20 largest shareholders – including investors of American Depository Receipts; (2) include BP's operational health, safety and environmental performance in the principles used to calculate performance pay to executives; and (3) improve shareholder access to company management by broadcasting the annual shareholder meeting on the Internet. The trial court is reviewing the terms and will rule on final approval in May.

"The settlement of this shareholder suit demonstrates the incredible power of alert and energetic institutional investors. The actions of these shareholders have resulted in critical corporate governance improvements that will ultimately benefit both BP and its investor-owners," said Coughlin Stoia attorney **Mary K. Blasy**.

UNITE HERE Nat'l Ret. Fund, et al. v. The Lord John Browne of Madingley, et al., No. 3AN-06-011929 (Alaska Super. Ct.).

Protecting the Rights of Inventors and Innovators: Intellectual Property Litigation Group Joins Coughlin Stoia Geller Rudman & Robbins LLP

Inventors, innovators and universities provide the creative spark that powers American industry. However, all too frequently, inventors' rights to their advances and inventions (their intellectual property, or "IP") are "borrowed" or stolen by the greater resources of large corporations. No longer.

A premier Intellectual Property Litigation Group, led by **John C. Herman** and **Ryan K. Walsh**, is joining forces with Coughlin Stoia. Herman and Walsh join Coughlin Stoia from the Atlanta office of Duane Morris LLP after previously practicing at King & Spalding LLP.

"Our clients include a number of the country's leading academic institutions, and they are asking for top-notch IP counsel. We are extremely pleased that some of the nation's most talented IP litigators have selected Coughlin Stoia as the law firm to help them grow their practice," said partner **Darren J. Robbins**. "Now inventors, innovators and academic institutions with sophisticated IP claims can turn to a law firm with the ability and resources to stand toe-to-toe against the world's largest corporations."

"Joining forces with the world's leading plaintiffs' firm allows us to leverage Coughlin Stoia's tremendous resources in building the leading plaintiffs' Intellectual Property Litigation Group. True innovation in this country comes primarily from small companies, universities and individuals who are too often overmatched by the resources of powerful corporations," added Herman.

Citing a few examples of Coughlin Stoia's notable victories, Walsh pointed to the securities class action against AT&T that recovered $100 million for investors after two weeks of trial, and the recently approved $600-million *Cardinal Health* securities class action recovery, the largest shareholder recovery ever in the Sixth Circuit. Coughlin Stoia also set the shareholder recovery record, obtaining more than $7 billion for defrauded Enron investors. These achievements led renowned Professor John C. Coffee, Jr. to declare that Coughlin Stoia "is the adversary most feared today by the defense bar."

"This unique fusion of legal powerhouses gives inventors, innovators and universities an ally with the ability and resources necessary to ensure that they are fairly compensated for their innovations," noted Herman. "Our clients have extraordinarily challenging and complex patent and copyright claims, and we are now uniquely positioned to provide them with the highest quality legal services available. We will continue to represent only those innovators with the strongest patents in the clearest cases of infringement."

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Top Attorneys Honored for Achievements

FEATURE 4

Daniels Fights for Institutional Investors Across the Globe

The Editorial Board of the *Daily Journal*, California's largest and most prominent legal publisher, has selected Coughlin Stoia's **Patrick W. Daniels** as one of the state's 20 most influential lawyers under the age of 40. The Editorial Board recognized Daniels' efforts and successes in representing major institutional investors from around the world in some of the largest and most significant shareholder actions in the U.S.

Early in his career at Coughlin Stoia, Daniels was approached to change his focus from litigating cases to working with institutional investors on bringing new actions and identifying opportunities for shareholders to make major improvements in the companies in which they invest. Daniels was apprehensive about making this transition, but ultimately felt bound to accept the offer.

Patrick W. Daniels

Over the next few years, Daniels was instrumental in developing Coughlin Stoia's Portfolio Monitoring Program℠, a program that tracks clients' transactions and data, searching out losses that may be due to fraud or other violations of securities laws. As a result, hundreds of the world's largest pension funds and investment advisors count on Coughlin Stoia's Portfolio Monitoring Program℠ – available at no cost – for a comprehensive analysis of potential recoveries.

Daniels also played a principal role in starting Coughlin Stoia's Claims-Filing Service, which provides guidance and assistance to investors who prefer to passively participate in recoveries resulting from litigation. Coughlin Stoia has many years of experience dealing with claims administrators, and is well-versed on how to file accurate and timely claims.

After assisting many institutional investors in the U.S., Daniels branched out to the U.K. and then worked his way to the Netherlands, Australia and other countries within Europe. Daniels is now responsible for advising hundreds of public and multi-employer pension funds, fund managers, insurance companies and banks around the world on issues related to corporate fraud in the U.S. securities markets and "best practices" in the corporate governance of publicly traded companies.

Daniels leads the cooperative efforts and joint ventures with outside independent advisors to provide advice and counsel to major investors in the U.S. markets. As part of these joint ventures, Daniels works very closely with political and financial leaders throughout the world to advise national and state government pension funds, central banks and fund managers worldwide.

Patrick W. Daniels is a partner at Coughlin Stoia Geller Rudman & Robbins LLP in the San Diego, California office.

George Leads Recovery in Two Class-Action Suits

It is unusual that a plaintiffs' attorney wins two multimillion-dollar class actions in the same year. Coughlin Stoia partner **David J. George** accomplished that feat, leading a team of attorneys that settled both *TECO Energy* and *Newpark Resources*, cases recovering a combined $27 million for shareholders.

The *TECO* case represented a significant victory for plaintiffs, achieving a $17.35-million settlement after more than two years of litigation. The lawsuit alleged that energy trader TECO failed to disclose the unavoidable and negative financial impact of the company's misadventure in the merchant energy game, including that its construction and operation of a number of multibillion-dollar "merchant" power plant projects were destined for failure commercially because the plants were incapable of delivering energy at a competitive market level. Moreover, defendants allegedly knew of the potential massive financial fallout and deliberately hid this information from the public.

In the *Newpark* case, George spearheaded a discovery plan that outlined every aspect of the fraud. The case alleged that during the class period, defendants caused Newpark shares to trade at artificially inflated levels by issuing a series of materially false and misleading statements regarding the company's financial statements, business and prospects, and charged executives with violations of the Securities Exchange Act.

George and his team compiled a complaint detailing how the defendants committed accounting fraud and defrauded investors out of millions of dollars through a scheme of options backdating, in violation of Newpark's own stock option policies, and grossly inflated Newpark's financial statements. As a result of these efforts, investors recovered a settlement of $9.3 million.

David J. George

George's tenacity was recognized in the *Daily Business Review*, where he was named one of the "Most Effective Lawyers of 2007."

David J. George is a partner at Coughlin Stoia Geller Rudman & Robbins LLP in the Boca Raton, Florida office.

In re TECO Energy, Inc. Sec. Litig., No. 04-CV-01948-JDW-EAJ (M.D. Fla.); *In re Newpark Resources, Inc. Sec. Litig.*, No. 06-CV-02150-ML-KWR (E.D. La.).

Motion to Extend Injunction Granted McGuire's Options Frozen

A preliminary injunction preventing UnitedHealth's former CEO William McGuire from exercising stock options received as part of his severance will remain in effect, a Minnesota court ruled on December 26, 2007. Judge James M. Rosenbaum issued an order extending the injunction issued on November 29, 2006, which effectively freezes over $1 billion in options grants given to the disgraced outgoing CEO. The order has significant implications for lead plaintiff **California Public Employees' Retirement System's ("CalPERS")** class action lawsuit against UnitedHealth, which names McGuire as one of the individual defendants.

The order was issued following consideration of a long-awaited report from the Special Litigation Committee. The Special Litigation Committee report concluded that McGuire is liable to UnitedHealth Group Inc. for improper stock option backdating, and proposed a settlement to both the state and federal derivative lawsuits, resulting in derivative case plaintiffs siding with defendants in asking the court to lift its injunction and release McGuire's ill-gotten gains. Additionally, a separate settlement was reached with the SEC, which announced a consent judgment with the embattled former executive for violations of the SEC laws. However, the court, taking into consideration that the Private Securities Litigation Reform Act of 1995 ("PSLRA") class action is still pending, put McGuire's personal haul "off-limits" for the time being.

Citing the unprecedented amount of McGuire's severance claims, the order's language makes the enormity of the sums involved clear: "Words such as 'huge,' 'fantastic,' 'astounding,' 'staggering,' or 'astronomical,' do not describe $1 billion. Such a sum can only be thought of as 'transcendent,' or in terms of the gross national product of smaller members of the United Nations."

Finding that CalPERS' class-action claim has a likely chance of success on the merits, and that its potential recovery from McGuire and/or UnitedHealth might be compromised if McGuire's options were released, the court found that "the balance of hardships favors the PSLRA plaintiffs. . . ."

Coughlin Stoia partner **Ramzi Abadou** stated in a letter to Judge Rosenbaum that McGuire's proposed settlements in no way compensate UnitedHealth's shareholders, "who suffered billions of dollars in damages due to McGuire's wrongdoing." Abadou pointed out that McGuire is giving back only a fraction of his stock options, "seeking to keep the rest for himself."

In re UnitedHealth Group Inc. PSLRA Litig., No. 06-CV-1691, Order (D. Minn. Dec. 26, 2007).

Motion to Enjoin BAE: Prince Bandar Bin Bribed

A Washington, D.C. federal judge has ruled that Prince Bandar Bin Sultan may not pocket proceeds from the sale of any of his U.S. property interests from U.S.-based accounts. On February 13, counsel for Prince Bandar and counsel for the shareholder plaintiff stipulated to extend this injunctive relief until the claims against the Saudi Prince are resolved.

The plaintiff, a city employee retirement fund, sought the injunction after its lawyers learned that Prince Bandar had sold three of his six Aspen, Colorado estates between May and December 2007 for $49 million. The retirement fund quickly filed suit against Prince Bandar in September 2007, alleging that the officers and directors of BAE Systems Plc, a British-based weapons dealer, had breached their fiduciary duties by making billions of dollars in bribe payments to Prince Bandar in the U.S., and that Prince Bandar and others aided and abetted those breaches of fiduciary duty. Astonishingly, one of Prince Bandar's multimillion-dollar estates was sold in December 2007, two months *after* the action was filed. Prince Bandar retains uncounted millions of dollars of U.S.-based real estate property, some of which he recently listed for sale, including his $135 million Hala Ranch estate in Aspen, Colorado.

Patrick J. Coughlin, lead counsel for the shareholder plaintiff, explains that the injunctive relief preserves BAE's options against Prince Bandar, should plaintiff prevail in the action: "The stipulated order covers all real property assets Prince Bandar now holds in the United States and extends to any future property acquisitions Prince Bandar makes in this country." The successful prosecution of this case would ring a hollow victory if Prince Bandar, alleged recipient of BAE bribe money, were simply permitted to take the money and run from the court's control. According to Coughlin, "With this order in place, we can focus our efforts on prosecuting this case rather than monitoring Prince Bandar's real estate."

Protecting corporate assets is arguably the most important function of corporate officers and directors. The lawsuit charges that BAE's senior executives and directors failed to protect the company's assets, and that the improper and illegal bribes were in fact corporate property from the company kitty. "When executives fail to protect corporate assets, shareholders may step in to preserve the assets," said Coughlin.

In re BAE Systems Plc Deriv. Litig., No. 07-cv-1646 (RMC), Joint Stipulation and Order Regarding Sales Proceeds of U.S. Real Property Owned or Acquired by Defendant Prince Bandar Bin Sultan (D. D.C. Feb. 13, 2008).

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

Consumer-Fraud Attorneys Expose Yogurt Rip-off

A $100-million marketing campaign promoting the supposed health benefits of "probiotic" yogurt products such as Activia® and DanActive™ has helped The Dannon Co., Inc. sell hundreds of millions of dollars worth of high-priced yogurt in recent years. However, a class-action lawsuit filed by Coughlin Stoia reveals that despite spending more than $100 million on marketing efforts that claim Activia® and DanActive™ have unique "clinically" and "scientifically proven" health benefits, Dannon's own studies flatly disprove the company's deceptive advertisements.

For instance, in its advertisements and on its label for Activia®, Dannon continues to falsely claim that it is "proven" to improve "intestinal rhythm" and "regulate your digestive system." Similarly, the label and advertisements for Dannon's DanActive™ incorrectly state that it "has been clinically proven to help naturally strengthen the body's defenses" and "to improve the body's immune system."

The revelations detailed in the complaint were conveyed to defrauded consumers by dozens of newscasts across the country. On *ABC World News*, Dr. Roshini Rajapaksa said that some of the health claims about probiotics don't "mean anything in medical terms." On *Good Morning America*, Dr. Rajapaksa called Dannon's marketing effort "a disingenuous advertising campaign that promised something that hasn't been proven."

As a result of the deceptive advertising, Dannon is able to charge consumers a 30% premium for its Activia® yogurt. Dannon spent more than $100 million on what is described as a "360-degree marketing plan" to deceptively promote its probiotic yogurts. As a result, Dannon sold $128 million of Activia® in 2006, and is estimated to have increased sales to approximately $300 million last year.

Dannon, however, knew that numerous scientific studies had failed to support the health benefits touted in the advertisements. In fact, a study conducted by leading microbiologists in 2006 and funded by Dannon determined that there was "no conclusive evidence" of probiotics providing health benefits. The report, entitled "Probiotic Microbes: The Scientific Basis," was prepared by the highly respected American Academy of Microbiology.

Even Franck Riboud, the current Chairman and CEO of Dannon's France-based parent company Groupe Danone, admitted that Activia's® success derived from the product's fraudulent marketing, saying, "The success of Activia® . . . is coming from the way you launch the product, how do you enrich the product, the marketing."

"Deceptive advertising has enabled Dannon to sell hundreds of millions of dollars worth of ordinary yogurt at inflated prices to responsible, health conscious consumers," said consumer attorney **Timothy G. Blood**.

To learn more about the class action and view images of the products and advertisements, please visit www.csgrr.com/dannon.

Wiener v. The Dannon Co., Inc., No. 08-00415-SJO (C.D. Cal. Jan. 23, 2008).

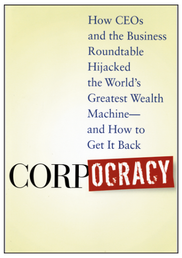
FAT CAT

"[A]s long as the music is playing, you've got to get up and dance. We're still dancing."

Former Citibank CEO Charles Prince uttered those infamous words last July. At the time, Citibank insiders knew that the commercial bank would be forced to admit losses of over $8 billion due to risky investments in mortgage-backed securities. Prince, a member of the Business Roundtable, jumped ship from the sinking Citibank in November 2007, pausing only to collect a $12.5-million bonus (part of Prince's $68-million retirement). During "Dancing Chuck's" tenure at Citibank, the company's stock price dropped nearly 50%, with losses expected to be over $11 billion, and expected layoffs of more than 12,000 Citibank employees. So much for "pay for performance." He will not be missed.

Charles Prince

Recommended
Reading



Corpocracy: How CEOs and the Business Roundtable Hijacked the World's Greatest Wealth Machine – and How to Get It Back

Robert A.G. Monks
John Wiley & Sons, Inc.

Corporations were conceived and chartered hundreds of years ago to serve the public good. Somewhere along the line, things changed. Today corporations, granted *de facto* status as persons, often trespass the boundaries of acceptable behavior. Corporate executives, shaking off the final vestiges of control and oversight, have seized the authority once granted only to emperors. CEO payouts have skyrocketed, with massive stock options grants frequently awarded to executives regardless of performance. How did this "free-market" system spin so horribly out of control? More importantly, can it ever be set aright?

Enter author and lifetime shareholder advocate Robert A.G. Monks, who traces the genesis of the modern corporate giant in his latest work, *Corpocracy: How CEOs and the Business Roundtable Hijacked the World's Greatest Wealth Machine – and How to Get It Back*. A New England Republican, Monks is an unapologetic advocate for corporate governance, not against the interests of business, but on its behalf.

In *Corpocracy*, published in December 2007, by John Wiley & Sons, Inc., Monks offers a grippingly good read, well-stocked with anecdotes and stories accumulated during Monks' life-long career in and around corporate boardrooms and in the halls of government. From the landmark Lewis F. Powell, Jr. Memorandum of 1971 to the creation of modern pro-business "Think Tanks," Monks brings to light the seldom-seen but incredibly important developments taking place off-stage – giving particular detail to the formation of the Wall Street insider *clique* of directors and executives named the "Business Roundtable." Composed of the interlocking board members of powerful corporations, the Business Roundtable helps fix the game in the CEOs' favor – ensuring that corporate boards are willing lapdogs to CEOs (who often double as Chairmen of the Board), and that the compensation committees are co-opted as willing dupes in a quest to maximize executive pay and minimize oversight. In this rigged game, the "free market" cannot operate, and CEO payouts have ballooned faster than Exxon's Lee Raymond, unfettered by board or shareholder oversight. Destructive behaviors by corporations, from pollution to options-backdating looting, are given a free hand – to the short-term benefit of the executive class. The harms become "externalities" to be borne by investors and the public alike, while neutered regulatory authorities repeat their well-worn and ineffective litanies for reform.

Monks, who has spent his career demonstrating – in dollars and cents – that energetic and active shareholders can promote better corporate governance and greater long-term prosperity for business, proposes not the usual recipes calling for new layers of Byzantine regulation, but simply this: that investors, particularly large institutional investors like Harvard University's endowment or the Bill & Melinda Gates Foundation, take up the shield and energetically exert their responsibilities as investor/owners. Monks' thoughtfully argued philosophy is that the investors are the true owners of a corporation, and therefore have an obligation to act in that capacity as owners, checking against CEO excesses, and safeguarding the long-term health of the "wealth-creation machine" for the benefit of all.

Corpocracy is a reveille to be heeded, and belongs on the "must-read" shelf of executives, shareholders and members of Congress alike.

Intellectual Property continued from page 3

"Coughlin Stoia's continuing success has been driven by our ability to provide our clients with the best litigation services in a variety of practice areas including securities, mergers and acquisitions, options backdating, individual opt-out actions, antitrust, consumer, and now, intellectual property disputes," said **Paul J. Geller**, Managing Partner of Coughlin Stoia's Florida office. "The expansion of our southeastern presence through the opening of an Atlanta office enables us to be even more responsive to the needs of our growing roster of institutional clients."

Herman's practice has focused on vindicating the rights of famous innovators. His noteworthy cases include representing inventor Ed Phillips in the *Phillips v. AWH Corp.* case, in which the Federal Circuit sat *en banc* in 2006; representing pioneers of mesh technology – David Petite, Edwin Brownrigg and IPCo – in a series of patent infringement cases; and representing the Georgia Tech Research Corp. in connection with its patent licensing, IP portfolio and securities issues.

Herman served as Co-Chair of the Intellectual Property Practice Group at Duane Morris and is recognized by his peers as one of the leading IP litigators in the South East. The Vanderbilt Law School graduate picked up several honors in 2007, as he was named to the "Top 100" *Georgia Super Lawyers* list, and "Georgia's Most Effective Lawyers" by *Georgia Trend*.

Walsh is a seasoned IP litigator who has prosecuted numerous high-profile IP cases involving medical and telecommunications technologies. *Georgia Super Lawyers* has honored Walsh as a "Rising Star" in the field of Intellectual Property Litigation in each of the last three years. Walsh graduated *magna cum laude* from the University of Georgia School of Law, where he was a member of the Order of the Coif and a Bryant T. Castellow Scholar.

To contact or to find out more information about Coughlin Stoia's IP Group, please visit www.csgrr.com/IP.

Calendar of Upcoming Events

April 10-11, 2008

Institute for Law & Economic Policy (ILEP), The University of Wisconsin Law School and Citizens Bank
14th Annual ILEP Conference - The Continuing Evolution of Securities Class Actions

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

The Ritz-Carlton
Naples, Florida

This roundtable discussion will focus on the Cox-Thomas institutional investor study paper, which overviews empirical work concerning securities class actions. Topics include compensation and deterrence, third-party accountability, transnational issues and the impact of *Tellabs, Inc. v. Makor Issues & Rights, Ltd.* on pleading securities cases.

For more information, visit: www.ilep.info

April 13-15, 2008

Financial Research Associates, LLC
The 7th Annual Stars & Stripes – The 2008 National Public Employees' Retirement Funds Summit

The Casa Marina Resort & Beach Club
Key West, Florida

Hear top consultants discuss their ideas for re-engineering fund plan designs and get proactive steps on becoming responsible stewards of fund plans. Consultants will effectively discuss alternatives to fixed income in a low return environment; sensible and effective solutions for coping with rising healthcare costs; and a critical look at the impact of fees on investment performance.

For more information, visit: www.frallc.com

April 13-17, 2008

American Bar Association
International Labor Law Committee – Midyear Meeting

Grand Hyatt
Beijing, People's Republic of China

Featured Speaker: **Albert H. Meyerhoff**, Coughlin Stoia Geller Rudman & Robbins LLP

At this meeting, committee members will study and report on current developments in foreign labor relations law and employment law practices, particularly those affecting U.S. multi-national enterprises operating abroad.

For more information, visit: www.abanet.org

April 28-29, 2008

C5
Conference on Securities Litigation

Millennium Knightsbridge Hotel
London, England

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

This conference assembles an expert panel of securities litigation professionals to discuss how recent developments have affected, and will continue to affect, the way securities cases are handled across the globe.

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

April 30-May 1, 2008

Information Management Network (IMN)
The 13th Annual Fire & Police Pension Funds Summit

The Desmond Hotel & Conference Center
Albany, New York

This summit brings together a divergence of trustee and director perspectives on how public safety funds have been managed through market cycles from 2000 to today and projections for the remainder of this decade. Through the economic landing of the late '90s, 9/11, recent credit market volatility and shifts in the equities, fixed income and alternative markets, public safety plan leadership has worked closely with consultants and fund managers to address short-term challenges and stay the course for the long term.

For more information, visit: www.imn.org

May 6-7, 2008

Information Management Network (IMN)
The 7th Annual European Summit on Corporate Governance and Responsible Investment

Radisson SAS Scandinavia Hotel
Copenhagen, Denmark

IMN's 7th Annual European Summit on Corporate Governance and Responsible Investment provides information on the implementation of environmental, social and governance factors in investment management. Participate and receive insight and education through panel discussions, case studies and profiles presented by leading public pension scheme executives, trustees and fund managers. Session topics include shareholder activism, investment case studies, the economic aspects of climate change, and an update on the United Nations Principles for Responsible Investment.

For more information, visit: www.imn.org

May 19-21, 2008

James R. Hoffa Memorial Scholarship Fund
7th Annual "Drive for Education" Invitational Golf Tournament

Paiute Golf Resort
Las Vegas, Nevada

For more information, go to www.teamster.org or call (202) 624-7471.

June 5-7, 2008

International Foundation
Benefit Plan Professionals Institute

La Costa Resort & Spa
Carlsbad, California

This event offers an informative and up-to-date program agenda, with some sessions providing a broad perspective of the latest information on health and pension benefit issues and others providing a more detailed perspective on related specialized topics within the benefits industry. Highlights include legal and regulatory updates, ethical issues for benefits attorneys, recent significant legal decisions and an open forum.

For more information, visit: www.ifebp.org

COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP

San Diego
San Francisco
Los Angeles
New York
Washington, D.C.
Boca Raton
Atlanta
Philadelphia

(800) 449-4900
www.csgrr.com

Please direct all inquiries to:
Patrick J. Coughlin
patc@csgrr.com