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**FEATURE 1**

# JUDICIAL ACTIVISM FOR WALL STREET: HOW THE COURTS ARE DEREGULATING BIG BUSINESS

Overturning *Roe v. Wade* and further erosion of our civil liberties are two reasons the U.S. Supreme Court should be central to the presidential election. There is a third. With a string of decisions siding with Big Business – "deregulation by judicial *fiat*" – the Supreme Court has declared open season on your wallet.

Last term, the Supreme Court issued a dozen pro-business decisions, imposing road-blocks to securities fraud, civil rights and antitrust cases; overturning punitive damages; and pre-empting states from regulating mort-gages. Only two decisions were unfavorable to Big Business.

This term, the Supreme Court is again off to a fast start. In *Riegel v. Medtronic, Inc.*, Justice Antonin Scalia held that FDA approval of medical devices barred victims' products liability suits. Next up, whether that same rule applies to pharmaceuticals – like the 80% of our drugs now being manufactured in India and China. The betting is that the 14-year-old *Exxon Valdez* punitive damages award is history. "The court is taking so many important business cases," said Robin Conrad of the National Chamber Litigation Center. "[It] seems to understand the impact of these issues on the global economy." Indeed.

***"[T]he high court's actions have encouraged the atmosphere of excess that sadly characterizes our new gilded age – whether the WorldCom 'Ponzi scheme' or worthless paper behind the current mortgage meltdown."***

But perhaps the decision that most shows the Supreme Court's hand is *Stoneridge v. Scientific-Atlanta*. There, a five-justice majority gave its blessing to backroom collaboration by third parties enabling others to defraud their own shareholders. Smacking of *Bush v. Gore*, the ruling demonstrated a willingness to stretch legal principles to achieve a pre-ordained result. While Wall Street bankers are dancing in their boardrooms, the actual impact remains to be seen. But, beyond cavil, the decision has impor-tant implications, including the growing body of litigation over subprime mortgage loans.

Most troubling, the high court's actions have encouraged the atmosphere of excess that sadly characterizes our new gilded age – whether the WorldCom "Ponzi scheme" or worthless paper behind the current mortgage meltdown. Eventually, such a free-for-all catches up with the economy. Unchecked predatory lending brought the massive mort-gage defaults that are shaking the U.S. economy, now with the collapse of Bear Stearns and with other major banks on the brink. When candidate John McCain proudly promises to nominate the next Scalia or John G. Roberts, Jr., it should send chills down the spines of those who lost their pensions to HealthSouth, their homes to Countrywide, or their jobs to monopoly power. Former Treasury Secretary Robert Rubin recently stated that such "excesses leading to disruptions are just the way our markets work." Perhaps. But we have laws to deter their worst form and reme-dies for their innocent victims. When jurists fail to enforce those laws, we lose more than the rule of law. We lose our way.

Back to *Stoneridge*. Free from civil liability, could two television equipment makers conspire with retail sellers to defraud investors? The question would seem to answer itself. Our secu-rities laws are intended to protect investors against such "fraudulent schemes."

Everyone knew the *Stoneridge* case was important. Treasury Secretary Henry Paulson lobbied President Bush, who ordered Solicitor General Paul Clement to back Wall Street. The SEC was prohibited from filing briefs in support of investors. The Roberts majority (the chief justice "unrecused" himself) went with the White House, holding that since the fraud took place in the marketplace of goods, not invest-ments, it was "too remote" to justify investor reliance on honest dealing. Another rationale

*Continued on page 6*

# Landmark Corporate Governance Reforms Achieved at Home Depot

FEATURE 2

Shareholder activism has led to significant new reforms at Home Depot. After a wave of unprecedented shareholder backlash caused in large part by CEO Robert Nardelli's obscene compensation package and the revelation that Nardelli and others had received "backdated" stock options, six separate shareholder derivative suits were filed in Atlanta, Georgia. The lawsuits address CEO compensation, backdating practices, and an accounting manipulation scheme involving return-to-vendor credits.

Coughlin Stoia, on behalf of the **City of Pontiac General Employees' Retirement System**, took over as lead counsel in these cases with the assistance of another 20 plaintiffs' law firms. After over a year of hard-fought litigation, Coughlin Stoia was able to negotiate a favorable resolution of the litigation, which will result in significant corporate governance reforms at Home Depot.

As a result of the settlement, among other changes, Home Depot's Board of Directors must: (i) restructure itself; (ii) require that two-thirds of its directors be independent; (iii) adopt enhanced director independence standards; (iv) adopt certain compensation policies and procedural safeguards for officers and directors; (v) implement voting standards requiring that director nominees receive a majority of votes cast to be elected to the board; (vi) impose safeguards on removal procedures for directors; (vii) adopt safeguards and notice requirements on stock option plans to lower the risk of backdating; and (viii) permit large shareholders or groups of shareholders to nominate directors.

On June 10, the Honorable Craig L. Schwall of Georgia's Fulton County Superior Court granted final approval of the settlement and commended Coughlin Stoia for acting "with substantial skill and professionalism in representing the plaintiffs and the interests of Home Depot and its shareholders in prosecuting [the] case."

Coughlin Stoia co-founder **Darren J. Robbins** and partners **Travis E. Downs, III** and **John C. Herman** spearheaded the litigation on behalf of plaintiffs. According to Herman, "The sweeping corporate governance reforms are a substantial step forward for Home Depot and its investors, and are an exceptional settlement of the action."

*City of Pontiac General Employees' Retirement System, et al. v. Langone, et al.*, No. 2006-cv-122302, Findings of Fact in Support of Order and Final Judgment (Fulton County Sup. Ct., Ga. June 10, 2008).

## U.S. in Financial Crisis: Coughlin Stoia Urges Investors to Take an Active Role

Investors in the U.S. markets have had a tumultuous year, to say the least. In addition to enduring nearly $500 billion in losses and write-downs due to the collapse in the mortgage-backed securities markets, investors have seen the heads of virtually every major financial institution on Wall Street forced out in scandal or shame. Far worse, investors have been left to foot the bill, while lavish severance packages were given to failed executives, pension funds and insurance companies.

*Patrick J. Coughlin and Patrick W. Daniels speaking at the CMSF conference in March*

Estimates of the total cost to investors continue to climb. In November 2007, *The New York Times* predicted "$300 billion in write-offs," and two months later, *Securities Law360* stated that subprime losses were more likely to top $500 billion: "The subprime mortgage crisis currently wreaking havoc on U.S. capital markets could lead to massive losses worldwide, according to a new report that estimates global subprime losses could top half a trillion dollars." By April the news was even worse, as *The Washington Post* reported that the International Monetary Fund had cited losses near $1 trillion worldwide.

Compounding these problems are historically unprecedented rates of foreclosures, resulting in working men and women being thrown out of their homes at some of the highest levels since the Great Depression.

Among the most prominent attorneys for investors in the U.S., **Patrick J. Coughlin** and **Patrick W. Daniels** of Coughlin Stoia recently discussed these issues at the Conference of Major Superannuation Funds ("CMSF") in Brisbane, Australia. Both Coughlin and Daniels stressed to investors the importance of taking an active role in pursuing litigation and governance to protect their rights as funds all over the world are being forced to endure losses in the billions due to fraud.

Coughlin and Daniels cited the AOL Time Warner disaster as an example of how it pays to be an active investor. In the *AOL Time Warner* private action, investors obtained ten times what they would have received as members of the class by actively opting out of the class action filed against the company.

Daniels pointed out how investors are taking the lead from corporate governance experts and protecting their rights and claims in actions such as those recently filed against BAE Systems plc, Chiquita Brands International, Inc. and DHB Industries, Inc.

Coughlin Stoia is already well-known for its record achievement of obtaining the largest securities recovery of all time – $7-plus billion for Enron shareholders – along with the two largest opt-out investor recoveries in history – more than $650 million for WorldCom investors and nearly $630 million for the defrauded AOL Time Warner shareholders. The noted plaintiffs' firm has not stopped at simply securing larger recoveries for investors – it also leads the effort to strengthen securities laws to better protect investors in the future and pioneers historic corporate governance improvements to reform the corporate world.

# *American Pipe* Tolling: The Ninth Circuit Reverses Itself

FEATURE 3

When can individual class members choose to opt out of a class action to prosecute their own individual claims? Thanks to recent contradictory rulings, answering this question has been next to impossible. On April 4, the Ninth Circuit Court of Appeals finally brought clarity to this issue by amending its opinion in *Hanford* and adopting the legal position urged by Coughlin Stoia lawyers.

In *American Pipe*, the U.S. Supreme Court established the rule that the timely filing of a class-action complaint tolls the statute of limitations on claims of putative class members, who may choose to opt out of the class action and file their own independent actions. The primary purpose of a statute of limitations is to ensure that defendants receive notice, within a reasonable time, of any claims against them so that they may preserve evidence and prepare a defense.

Yet in *WorldCom*, Southern District of New York Judge Denise L. Cote ruled that only class members who wait for a ruling on a motion for class certification could claim the advantage of the Supreme Court's holding in *American Pipe*. Judge Cote dismissed claims of dozens of institutional investors because they filed their own individual actions before she had ruled on a motion for class certification – insisting that their claims would have been timely only if they had waited a bit longer to file them.

Coughlin Stoia lawyers appealed the *WorldCom* ruling to the U.S. Court of Appeals for the Second Circuit, which issued an opinion on July 26, 2007, reversing Judge Cote. The Second Circuit held 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 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."

The opposite conclusion was reached less than three weeks later when the Ninth Circuit issued its opinion in *Hanford*, which adopted Judge Cote's by-then reversed decision. Under *Hanford*, in the Ninth Circuit class members would have to wait until ***after*** a ruling on class certification to file their own individual claims – at the cost of having the claims dismissed should they file too soon.

With the Second and Ninth Circuits adopting radically different rules, putative class members could only guess what other federal courts might do – and the cost of guessing wrong could be fatal to their claims. Moreover, following the Ninth Circuit's rule could produce years of delay in many cases. In the *Hanford* case itself, the district court had put off deciding the plaintiffs' class certification motion for nearly a decade.

Recognizing that this confusion could lead to disaster for shareholders, Coughlin Stoia attorneys moved quickly, urging plaintiffs' lawyers in *Hanford* to seek reconsideration and filing an *amicus curiae* brief in the case on behalf of the **California Public Employees' Retirement System ("CalPERS")**. Coughlin Stoia partner **Eric Alan Isaacson**, who argued the Second Circuit *WorldCom* appeal and framed the *Hanford amicus* brief, argued that the Second Circuit's holding was mandated by Supreme Court precedent and reflected better policy than Judge Cote's ruling.

*Continued on page 6*

## NEWSBRIEF

### Complaint Packs a Punch

Filing an effective complaint can cause a company to acknowledge its mistakes and implement corrective policies. Just ask the Board of Directors at Greenfield Online, Inc., who in response to a consolidated complaint filed by Coughlin Stoia, recently began an internal audit process and admitted that some of its employees had violated the company's accounting policies.

In the consolidated complaint, lead plaintiff **Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Trust Fund** alleges that Greenfield, which provides on-line surveys, misrepresented information about the size of its survey panels and engaged in improper accounting practices, including the improper recognition of its revenue, in order to meet or exceed Wall Street estimates.

A scant two months after the consolidated complaint was filed, Greenfield issued a press release disclosing that the allegations in the consolidated complaint prompted the company to initiate an investigation by its audit committee and outside counsel. Greenfield invested $3 million in the internal review, finding that certain employees had taken part in improper activities with regard to the company's revenue recognition policies for certain transactions. As a result of this misconduct, the company acknowledged errors in its previously filed transactional statements and stated that it intends to implement a remediation plan that will include additional training, among other appropriate remedial actions.

Coughlin Stoia partner **David A. Rosenfeld**, counsel for the lead plaintiff, explains that "the company's corrective actions validate the allegations of the consolidated complaint and demonstrate how the lawsuit will greatly benefit Greenfield shareholders going forward."

Defendants recently filed a motion to dismiss the consolidated complaint. However, the parties reached an agreement in principle to settle the action before briefing on the motion was completed.

*Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Trust Fund v. Greenfield Online, Inc.*, No. 3:07-cv-1118 (D. Conn.).

## *Motion to Dismiss*
## *Aon* Not Going Away

Aon Corp. and the company's former executives remain liable for securities fraud after Judge Charles R. Norgle denied defendants' Motion to Reconsider their Motion to Dismiss the Consolidated Amended Complaint in light of a recent U.S. Supreme Court decision.

In *Tellabs*, the Supreme Court clarified the standard for pleading a "strong inference" of *scienter* – a defendant's recklessness or intent to deceive – under the Private Securities Litigation Reform Act of 1995. After reversing the Seventh Circuit, the Supreme Court's decision was initially hailed as a significant victory for corporations and the defense bar, who hoped the ruling would shield fraudulent activity. As Judge Norgle recently proved in *Aon*, however, when properly applied, *Tellabs* should not result in the dismissal of well-investigated and well-pled claims of fraud.

Judge Norgle explicitly rejected defendants' contention that the Supreme Court "emphatically" or "dramatically" raised the pleading standards in securities-fraud actions. According to Judge Norgle's March 7 opinion, "For the [Consolidated Amended] Complaint to survive, the Plaintiff need only 'plead facts rendering an inference of *scienter* at least as likely as any plausible opposing inference.'" Reviewing the detailed Consolidated Amended Complaint filed on behalf of lead plaintiffs **Monroe County Employees' Retirement System**, **Teamsters Local 408 Pension Fund**, **Western Pennsylvania Electrical Employees Pension Fund** and **Hawaii Reinforcing Ironworkers Pension Trust Fund**, Judge Norgle held that allegations of defendants' knowledge of various kickback and steering schemes, together with their motive to conceal the schemes and violations of Generally Accepted Accounting Principles, all contributed to a strong inference of *scienter*.

In a holding that is applicable to other securities-fraud cases, Judge Norgle noted that the "Defendants had a strong incentive to maintain higher credit [] ratings for the company," and that "in light of the potential negative impact on the company's client relationships, Defendants had a strong incentive to keep quiet from analysts and investors the true nature and magnitude of the risks" faced by Aon. Far from the barrier envisioned by those bent on committing and defending corporate fraud, Judge Norgle's ruling demonstrates that the standard set forth in *Tellabs* should not prevent the successful prosecution of securities-fraud actions.

Led by partners **Tor Gronborg** and **Debra J. Wyman**, Coughlin Stoia's *Aon* litigation team is currently completing fact depositions in anticipation of a trial in late 2008 or early 2009.

*Roth v. Aon Corp.*, No. 04-C-6835, 2008 U.S. Dist. LEXIS 18471 (N.D. Ill. Mar. 7, 2008); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499 (2007).

## *Motion for Class Certification*
## *UnitedHealth* Class Members Forge Ahead

On March 18, a Minnesota court officially ruled that the case against UnitedHealth Group Inc. may proceed as a class action, granting lead plaintiff **California Public Employees' Retirement System ("CalPERS")** and plaintiff **Alaska Plumbing and Pipefitting Industry Pension Trust's** motion for class certification.

The court certified a class of all persons who purchased or otherwise acquired the publicly traded securities of UnitedHealth between January 20, 2005 and May 17, 2006, including those class period purchasers who also held UnitedHealth stock during the 2002-2006 UnitedHealth proxy solicitations, and those who acquired the company's stock in or traceable to the December 20, 2005 merger with PacifiCare. The court also appointed CalPERS and Alaska Plumbing and Pipefitting Industry Pension Trust as class representatives and Coughlin Stoia as class counsel.

Coughlin Stoia partner **Ramzi Abadou** argued on behalf of CalPERS and Alaska Plumbing and Pipefitting Industry Pension Trust. During the hearing, defendants argued that the class period should end on April 7, 2006. On that date, the company filed its Form 8-K, in which UnitedHealth disclosed that lawsuits stemming from the company's stock options practices had been filed. Defendants claimed that after April 7, 2006, investors and the market knew that so-called "storm clouds" were on the horizon concerning UnitedHealth's historic stock option practices. The court rejected defendants' argument and adopted the end date proposed by plaintiffs – May 17, 2006 – finding that "the real truth and gravity of the [options backdating] situation did not reach the market until [that date]."

The class action, pending in the District of Minnesota, alleges that during the class period and in UnitedHealth's 2002-2006 Proxy Statements, defendants issued materially false and misleading statements regarding the company's business, its stock option plans, compensation practices, and financial results, and employed contrivances and manipulative acts in connection with UnitedHealth's stock option practices. As a direct result of defendants' fraudulent scheme, investors suffered millions of dollars in losses.

Recently, plaintiffs prevailed on six discovery motions, including several in which the court ordered defendants to turn over documents previously withheld on the basis of the attorney-client and work product privileges. In addition, the court also ordered both parties to file unsealed copies of documents filed in connection with summary judgment, thereby giving the public full access to review the arguments and supporting evidence advanced by each side. The court has directed the parties to be ready for trial by the fall.

*In re UnitedHealth Group Inc. PSLRA Litig.*, No. 06-1691 JMR/FLN, Order (D. Minn. Mar. 18, 2008).

## *Motion to Compel*
## Abercrombie Drops a Stitch

Plaintiffs do not have to reveal certain details regarding confidential information obtained from witnesses, according to a recent ruling in *Abercrombie*. Magistrate Judge Terrence P. Kemp of the Southern District of Ohio ruled that the attorney work product privilege protects a plaintiff from being forced to reveal which witnesses have been interviewed and what information they have provided to lawyers drafting a complaint.

In accordance with legal procedures, lead plaintiff **City of Dearborn Heights Act 345 Police & Fire Retirement System** disclosed the names of 84 witnesses that had relevant knowledge about the facts alleged in the pension fund's amended complaint against Abercrombie. Defendants attempted to force plaintiff to identify which of the 84 witnesses were interviewed in preparing the amended complaint and to disclose information that would link witnesses to specific allegations. Ruling in favor of plaintiff, however, Magistrate Judge Kemp held that the information sought by defendants was "'at the heart of the work product rule,'" and denied defendants' motion.

Magistrate Judge Kemp's rejection of defendants' argument supporting the disclosure of the protected information is also noteworthy: "The mere fact that [defense] counsel may have to do some investigative work to determine which witnesses have knowledge of which relevant facts is clearly insufficient to justify an intrusion into the particulars of how opposing counsel structured their interviews and how much credence they gave to the statements of individual witnesses. . . . While counsel may not withhold either the names of witnesses with relevant information or the location of relevant documents – and that has not happened here – they simply cannot be compelled to give opposing counsel all of the details of how they decided to plead each allegation in the [amended] complaint."

The Private Securities Litigation Reform Act of 1995 prevents plaintiffs from serving discovery on defendants in the early stages of litigation, making information provided by confidential witnesses crucial to drafting a properly pled complaint. According to Coughlin Stoia attorney **Michael F. Ghozland**, "The decision in *Abercrombie* is important because it allows attorneys to make strategic decisions without concern that their thought process will be subject to review by opposing counsel."

The pension fund alleges that Abercrombie misrepresented its financial performance by fudging the monthly sales figures on its denim products during the class period, when in fact gross margins were declining and the clothier was taking extraordinary measures to boost denim sales, including drastic markdowns, employee giveaways and discounted sales to low-end retailers. As a result of defendants' misrepresentations, Abercrombie's stock rose from under $58 to a class period high of $74. When the truth about the clothing sales became public, Abercrombie's stock price retreated back to $56.65 – a drop of 23%. Having defeated the defendants' motion to compel, litigation moves forward.

*Ross v. Abercrombie & Fitch Co., et al.*, No. 2:05-cv-00819-EAS-TPK, Opinion and Order (S.D. Ohio Mar. 24, 2008).

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

### FedEx Grounded

A shareholder lawsuit against the Board of Directors of FedEx Corp. was filed on May 8. The suit, brought by **Plumbers and Pipefitters Local 51 Pension Fund**, alleges that the officers and directors of the delivery company deceptively misclassified employees as contractors.

FedEx Ground, the ground delivery unit of FedEx Corp., uses 15,000 drivers for its delivery services. By classifying the drivers as "entrepreneurs" rather than employees, FedEx Ground avoids paying benefits and tax withholding payments. However, as a number of state labor boards have argued, the extreme control that FedEx Ground exerts over these "independent contractors," including requiring drivers to work certain hours, purchase their own trucks and more, qualifies the drivers as employees.

As alleged in the complaint, the misclassification of these employees has resulted in dozens of lawsuits against FedEx's labor practice, as well as a tentative assessment by the IRS holding FedEx liable for hundreds of millions of dollars in back taxes and penalties. The Plumbers' lawsuit, filed recently in the Western District of Tennessee, seeks damages for FedEx from the Board of Directors and reform of the company's corporate governance and internal procedures to comply with IRS regulations and state and federal labor laws.

In November 2007, the Supreme Court of California rejected an appeal by FedEx and upheld a state court ruling finding that the company's drivers are in fact employees. According to Coughlin Stoia partner **Randall J. Baron**, "It appears from Coughlin Stoia's investigation that FedEx officers and directors intend to continue these deceptive practices and cause further harm to the company if they are not made to undertake the internal governance changes sought in this action."

*Plumbers and Pipefitters Local 51 Pension Fund v. Smith, et al.*, No. 2:08-cv-02284-SHM, Verified Shareholder Derivative Complaint for Breach of Fiduciary Duty, Abuse of Control, Gross Mismanagement, Corporate Waste and Unjust Enrichment (W.D. Tenn. May 8, 2008).

# SETTLEMENT update

## *Pet Food Products* Justice for Pets

Pet owners throughout the U.S. and Canada received welcome news on May 30, when the U.S. District Court for the District of New Jersey granted preliminary approval to a proposed class-action settlement with several manufacturers, distributors and retailers of pet food that was contaminated with tainted wheat gluten imported from China.

Pet owners across the country filed over 100 lawsuits arising out of the 2007 recall of contaminated pet food. The recall began with Menu Foods' March 2007 announcement, and quickly expanded to ultimately cover approximately 180 brands of pet food and pet treats produced by 12 manufacturers, and distributed, marketed and sold by dozens of retailers also named as defendants in the actions. Coughlin Stoia served as co-lead counsel for the class of pet owners along with five other law firms.

Defendants agreed to pay $24 million to settle the litigation, in addition to the approximately $8 million already paid out by certain defendants in connection with voluntary claims processes they established following the pet food recalls. Defendants' latest settlement offer brings the total cash value of the settlement to approximately $32 million.

Class members can recover up to 100% of their reasonably documented economic damages and may recover, at the claims administrator's discretion, up to $900 in undocumented economic damages. Such economic damages include: the costs of veterinary treatment; necropsy or pet autopsy costs; euthanasia costs; cremation or burial costs; damage to personal property; and the cost of the deceased pet or cost to purchase a replacement pet. In addition, certain non-monetary relief was achieved in the settlement, namely the manufacturing defendants' agreement to continue testing for melamine and rice protein concentrate in their pet food for one year from the signing of the settlement agreement.

The settlement was reached after seven months of hard-fought, arm's-length negotiations between Coughlin Stoia and the defendants.

According to Coughlin Stoia partner **Stuart A. Davidson**, this is a significant victory for pet owners. "While there is nothing that can ever fully compensate people for the terrible personal losses they have suffered, the settlement does provide for the possibility of a complete recovery of all economic damages incurred by pet owners, which is likely much more than they would have received had they litigated the cases individually."

A final settlement approval hearing is currently scheduled for October 14.

*In re Pet Food Products Liability Litig.*, MDL No. 1850, Order Granting Preliminary Approval of Class Action Settlement, Approval of Proposed Form of Notice, and Preliminary Certification of Settlement Class (D. N.J. May 30, 2008).

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### Coughlin Stoia Partner Recognized as One of the Top Litigators in California

Coughlin Stoia partner **Anne L. Box** was recently recognized by the *Los Angeles Daily Journal* as one of the top litigators in California. Box joined Coughlin Stoia in 2003 and immediately took on a cause that would consume her almost every waking moment for the next four years: representing victims of the giant Enron fraud.

*Anne L. Box*

As a state prosecutor in Fort Worth, Texas during the 1990s, Box tried 100 cases to verdict. It was that kind of experience and talent that Coughlin Stoia was looking for to help co-founder **Patrick J. Coughlin** lead the *Enron* case to trial. Four years, 400 witnesses, millions of pages of testimony and 50 experts later, Coughlin Stoia won the largest securities-fraud recovery in history – more than $7 billion for injured shareholders.

Box is currently hard at work on *UnitedHealth*, another massive securities-fraud action, in which she is representing investors, including the **California Public Employees' Retirement System**. *UnitedHealth* is set for trial this fall.

## Judicial Activism continued from page 1

rang more clearly: Otherwise "[o]verseas firms . . . could be deterred from doing business here. . . . This, in turn, may raise the cost of being a publicly traded company under our law and shift securities offerings away from domestic capital markets."

So justice is bad for business. Actually, it's not. Enforcing "liability for those who violate [securities laws] will not harm American competitiveness," said Justice John Paul Stevens in dissent. "The fact that our markets are the safest in the world has helped make them the strongest in the world." Not anymore. What prevents fraud now? Honest bankers? The power of prayer?

## *American Pipe* Tolling continued from page 3

Coughlin Stoia's effort paid off. On April 4, the Ninth Circuit cleared up the confusion by amending its opinion in *Hanford* and following the Second Circuit's decision in *WorldCom*. "We find the Second Circuit's reasoning persuasive and adopt it," the Ninth Circuit explained as it reversed itself and ruled that to obtain the benefit of *American Pipe*, putative class members need not wait for a ruling on class certification before filing their own independent actions.

*In re Hanford Nuclear Reservation Litig.*, No. 05-35648, Order Amending Opinion and Amended Opinion (9th Cir. Apr. 4, 2008).

# Recommended Reading

## Greed, Fraud & Ignorance: A Subprime Insider's Look at the Mortgage Collapse

Richard Bitner
LTV Media LLC

The shockwave of the mortgage collapse rippling across the nation has affected homeowners, lenders, mortgage brokers and banks, and the word "subprime" itself is now a feature of the financial lexicon. Pundits and the 24-hour news networks have devoted the ritual verbiage to the issue, emphasizing a "blame the borrower" theme. However, the sound-bite treatment of the ongoing mortgage crisis fails to inform as to the complicated history and root causes of the subprime meltdown crisis – crucial lessons missed, as regulators and legislators enter the phase of "where do we go from here?" and attempt to implement safeguards. With impeccable timing, enter author and former lender Richard Bitner. Having made his mortgage bones with GMAC Mortgage, LLC in residential financing, Bitner enjoyed a front-row seat for the mortgage meltdown from Kellner Mortgage Investments, a Plano, Texas lender that he co-founded in 2000. From an insider's vantage point, Bitner witnessed the entire debacle. We are fortunate that Bitner has written a forthright account that details the entire food chain of subprime lending, from the borrower to the mortgage broker to the lender, and does not spare the Wall Street banks and Alan Greenspan's Fed.

As Bitner informs us, specialized lending for troubled-credit borrowers, the so-called "subprime" borrower, began as a niche market long ago, and specialized lenders managed the more risky products through regulatory safeguards and higher rates. However, in the late 1990s and early 2000s, a number of factors converged to transform subprime lending into one of the hottest products around, and subprime mortgage lending took off like a Southern California wildfire. Fueling the blaze was the repeal of the Glass-Steagall Act during the Gingrich Congress' frenzied destruction of post-1929 financial regulations, along with a hot housing market and plentiful cheap credit from the Fed's slashed rates. The big banks were given regulatory go-ahead to securitize pooled mortgages, creating subprime mortgage-back securities. These new vehicles offered quick and dirty short-term profits that Wall Street could not refuse, and the touch-paper was lit. The highly flammable scheme depended on endlessly rising home values, relaxed regulations, and Wall Street's post-Greenspan-era conditioning that if (and when) their reckless behavior crashed the credit markets (*à la* Long Term Capital Management), there just might be a predictable Fed bailout for the big banks. However, mortgage owners, investors and the lending market would be left to burn.

*Greed, Fraud & Ignorance* is as informative as any recent textbook on the matter, with the advantage of being colorful and well-written with gems like, "Although Wall Street is skilled at making money, risk management has never been an area of expertise." Bitner's pen savages Countrywide and Merrill Lynch in particular for their failures to manage risk, while pushing toxic investment products on borrowers and investors. Bitner concludes with hard, practical advice for Congress on getting the system back on track. This insider's account should be heeded.

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## FAT CAT

"Pay for performance" has been the rallying cry for Wall Street and lavish CEO payouts. But no one shared the memo with Angelo Mozilo, former CEO of Countrywide Financial Corp. On top of his $10.8-million salary in 2007, Mozilo cashed out over $100 million in a stock options trading plan – all this while the subprime mortgage lender he chaired lost hundreds of millions of dollars and its stock price fell from over $42 to the cellar.

*Angelo Mozilo*

In the words of Daniel Pedrotty, director of the American Federation of Labor – Congress of Industrial Organizations' ("AFL-CIO") Office of Investment, "If Angelo Mozilo was truly paid for performance, he wouldn't have earned a dime last year. In fact, he'd have to pay shareholders back." Countrywide, the lender that has become synonymous with massive subprime investor losses, wrote off $704 million in 2007, while laying off 11,000 employees.

# Calendar of Upcoming Events

## July 21-22, 2008

**Financial Research Associates, LLC**
**The 2nd Annual Defined Contribution Investment Only Forum**

*The Harvard Club*
*Boston, Massachusetts*

The Pension Plan Act of 2006 opened the floodgates to asset managers, creating an ultra-competitive landscape in the defined contribution arena. This changed the face of the industry and is now forcing asset managers to rethink their defined contribution models. This conference will give attendees necessary strategies for growing and enhancing performance, networking opportunities with colleagues and other defined contribution professionals, and an insight at what plan sponsors, consultants and record keepers are now looking for in a fund.

For more information, visit: www.frallc.com

## August 7-12, 2008

**American Bar Association**
**2008 Annual Meeting**

*Waldorf=Astoria*
*New York, New York*

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

The ABA Divisions, Sections, Committees and Commissions are developing over 200 CLE programs that will help improve professional skills and expertise. There will be abundant opportunities to network with judges and lawyers from around the world. The meeting will also feature the world's largest legal EXPO, providing an array of goods and services pertaining to the practice of law.

For more information, visit: www.abanet.org

## August 10-13, 2008

**International Foundation**
**41st Annual Canadian Employee Benefits Conference**

*Halifax World Trade and Convention Centre*
*Halifax, Nova Scotia*

This conference is for multi-employer and public sector plan trustees, administrators, attorneys, accountants, actuaries, investment managers and others who provide services or who are involved in the overall management and investment of labor management benefit trust funds in Canada. Some conference highlights include the latest, need-to-know information on legal and fiduciary issues affecting Canadian plans and special sessions addressing the latest issues specifically affecting public sector plans.

For more information, visit: www.ifebp.org

## August 14-15, 2008

**Practising Law Institute**
**Advanced Securities Law Workshop 2008**

*Loews Coronado Bay Resort*
*Coronado, California*

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

Designed for the experienced corporate and securities lawyer, this program will consider the practical impact of SEC rulemaking and initiatives, including the use of international accounting standards; mutual recognition of European securities regulations and executive compensation disclosure; corporate governance developments, including dealing with activist institutional shareholders; the impact of recent pro-defense U.S. Supreme Court decisions on securities litigation; and enforcement trends.

For more information, visit: www.pli.edu

## August 18-21, 2008

**National Association of State Treasurers ("NAST")**
**2008 Annual Conference**

*Samoset-on-the-Ocean*
*Rockport, Maine*

The NAST annual conference draws the states' key financial officials together for in-depth discussions on current trends and strategies to meet the challenges of a volatile economy. Joining them will be a line-up of experts to provide their latest projections toward an economic recovery.

For more information, visit: www.nast.net

## September 21-23, 2008

**Institute for International Research ("IIR")**
**16th Annual Fire & Police Pension Funds Forum**
**Guns & Hoses 2008**

*Hyatt Regency*
*Huntington Beach, California*

There will be more fire and police plan sponsors in attendance than at any other public safety conference in the U.S. Speakers at this conference represent perspectives from all sizes of funds – from $15 million to over $3 billion. There will be a securities fraud mock trial – IIR will stage an interactive simulation based on the class-action suit brought by a pension fund against one of their investment firms.

For more information, visit: www.iirusa.com


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