Robbins Geller Rudman & Dowd LLP

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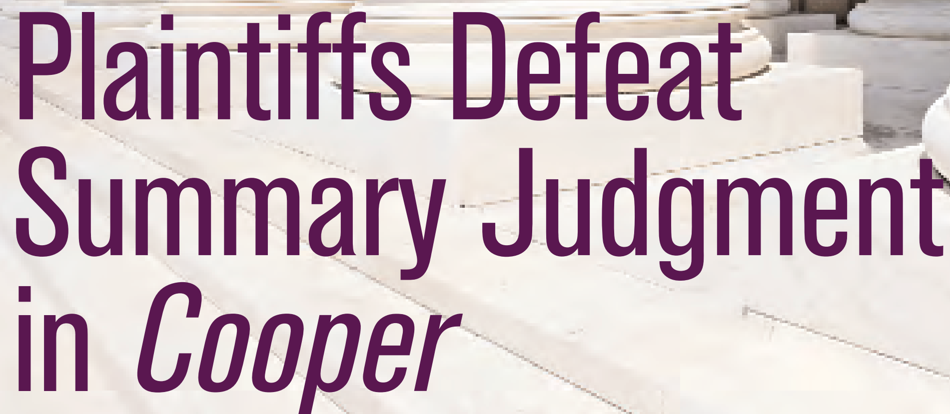

Plaintiffs Defeat Summary Judgment in *Cooper*

On March 4, Judge Cormac J. Carney of the United States District Court for the Central District of California denied in substantial part motions for summary judgment filed by defendants The Cooper Companies, Inc., and A. Thomas Bender, President and CEO, Robert S. Weiss, Chief Financial Officer and Chief Operating Officer, and Gregory A. Fryling, President and Chief Operating Officer of CooperVision, a wholly owned subsidiary of The Cooper Companies.

The court's ruling is a victory for court-appointed lead plaintiffs **Wayne County Employees' Retirement System, UNITE HERE National Retirement Fund** and **United Food and Commercial Workers Union Local 880 – Retail Food Employers Joint Pension Fund** and the class of investors who purchased or otherwise acquired the publicly traded securities of Cooper during the July 29, 2004 through November 21, 2005 class period.

Plaintiffs allege that defendants violated certain provisions of the Securities Exchange Act of 1934 in connection with a series of statements beginning on July 28, 2004, when Cooper announced its merger with Ocular Sciences, Inc. The merger resulted in Cooper becoming the third largest manufacturer of soft contact lenses in the world. Plaintiffs allege three categories of false and misleading statements: (i) statements concerning Ocular's inventory strategy; (ii) statements concerning Ocular's and Cooper's sales force integration; and (iii) statements concerning the threat to Cooper's business by silicone hydrogel lenses produced by competitors – a technology Cooper did not have.

After unsuccessfully moving to dismiss the action, opposing plaintiffs' motion for class certification, and moving for summary judgment on the issue of loss causation, defendants filed motions for summary judgment as to all of plaintiffs' claims on December 21, 2009. The Cooper defendants argued that plaintiffs could not prove any elements of their §10(b) and §20(a) claims, including loss causation, falsity and scienter. The litigation team at Robbins Geller Rudman & Dowd LLP, led by partners **X. Jay Alvarez**, **Jonah H. Goldstein**, **G. Paul Howes**, and associates **Ryan A. Llorens**, **Maureen E. Mueller** and **Darryl J. Alvarado**, successfully opposed defendants' motions, opening the door for a potential jury trial.

In denying defendants' motions, Judge Carney rejected their argument that plaintiffs are unable to prove loss causation as to certain statements. Relying on arguments advanced by plaintiffs and their loss causation expert, Dr. Steven P. Feinstein, Judge Carney held that there are material issues of fact about whether certain statements made by defendants maintained the artificial inflation in Cooper's stock price by continuing to conceal negative news from the market.

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Credit Rating Agencies Caught in the Crosshairs

Before buying a bond or a debt instrument, investors have traditionally relied on credit ratings provided by independent agencies, including Moody's, Standard & Poor's, and Fitch.

"Several new shareholder-led actions brought by institutional investors are now shining a bright light on the extent to which these agencies have participated in the fraud."

Good credit ratings stamp a bond issue as investment grade, such as "AAA," and less credit-worthy or "junk" bonds with B or lower ratings. Since these ratings are provided by an independent third party, they have historically been deemed reliable. It was once thought that even the U.S. Securities and Exchange Commission ("SEC") could depend on them. Times have changed.

One of the inconvenient truths to emerge from the recent financial crisis is that credit rating agencies have been involved in enabling alleged financial frauds on a global scale, affecting investors from Alaska to Tel Aviv. Several new shareholder-led actions brought by institutional investors are now shining a bright light on the extent to which these agencies have participated in the alleged fraud.

Useful to issuers and investors alike, favorable credit ratings make it easier to sell debt instruments like corporate or municipal bonds. Not only do good ratings lower default insurance, but many institutional investors are limited by fiduciary duty to buying only those instruments stamped as "investment grade" by credit rating agencies. Rating agencies are now so deeply enmeshed in the capital markets that even SEC regulations reference agency-released ratings. The absence of any other useful yardstick for rating creditworthiness means rating agencies wield tremendous influence and power without facing either serious scrutiny by regulators or meaningful competition. They also enjoy near-immunity from shareholder lawsuits.

The protected status afforded to these agencies is now changing. With the collapse of the financial markets in 2008, rating agencies were accused of negligently misrepresenting the value of securities by assigning unjustifiably high ratings. Now several credit rating agencies find themselves caught in the uncomfortable crosshairs of heightened legislative and judicial attention, and a recent federal court decision from the Southern District of New York indicates the start of crucial changes in how the law will be applied to them.

Continued on p. 6

New Name, Same Unmatched Shareholder and Consumer Advocacy

The San Diego-based law firm of Coughlin Stoia Geller Rudman & Robbins LLP has been formally renamed Robbins Geller Rudman & Dowd LLP. **Patrick J. Coughlin** will remain Of Counsel to the Firm and partner **Michael J. Dowd** will join the masthead as a name partner.

Dowd is a former federal prosecutor and was recently named Attorney of the Year in the area of securities law by *California Lawyer* (*see* page 3). "I'm honored to become a named partner," said Dowd. "I look forward to continuing our Firm's unmatched success in standing up for defrauded shareholders and consumers."

From Left: Michael J. Dowd, Samuel H. Rudman, Darren J. Robbins and Paul J. Geller

Darren J. Robbins will continue to work alongside Dowd in managing the San Diego office, where he also oversees the Firm's mergers and acquisitions practice, as well as numerous securities class and derivative cases. **Paul J. Geller**, who was twice recognized by *The National Law Journal* as one of the nation's top forty lawyers under the age of forty, continues to litigate a full caseload of securities and consumer cases while managing the Firm's Boca Raton, Florida office. **Samuel H. Rudman**, a former SEC lawyer, continues overseeing the major cases handled out of the offices he manages in Melville, Long Island and New York City.

According to Geller, "I'm so proud to be part of a firm that has the best attorneys in the business, the resources to take on the most powerful corporations in the world, and the proven determination to take cases to trial."

In his role as Of Counsel, Coughlin will step back from the day-to-day administrative duties of the Firm. "I look forward to continuing to work as Of Counsel with a firm that has an unmatched group of talented attorneys, more institutional clients than any other securities firm, and scores of good cases," said Coughlin.

Robbins Geller Rudman & Dowd LLP is the acknowledged leader in the securities field, with unmatched success recovering funds for defrauded shareholders, including the largest securities class action recovery in history (over $7 billion for Enron shareholders), the largest options backdating recovery (nearly $1 billion for UnitedHealth shareholders), the largest opt-out recovery (more than $650 million for WorldCom institutional investors), and a recent liability verdict returned by the jury in *Household International*, which is expected to yield in excess of $1 billion for the plaintiff class. ■

Michael J. Dowd Named Attorney of the Year

The monthly legal publication *California Lawyer* has awarded Michael J. Dowd one of its top honors, naming him "Attorney of the Year" for his achievements in the area of securities law.

The honor coincides with Dowd being elevated to a name partner at Robbins Geller Rudman & Dowd LLP, formerly known as Coughlin Stoia Geller Rudman & Robbins LLP (*see* page 2). A former federal prosecutor, Dowd has served on the Firm's Executive Committee for the last several years and played a key role in many of the Firm's groundbreaking cases, including last year's victories against Household International and UnitedHealth – two of the most significant results achieved in recent securities litigation.

In *Household*, Dowd led a trial team to a stunning jury verdict last year, following a six-week trial in Chicago. The court-appointed lead plaintiffs **International Union of Operating Engineers**, **Local 132 Pension Plan**, **PACE Industry Union-Management Pension Fund**, and **Glickenhaus & Company** alleged that the finance corporation Household (now part of HSBC) and three individual defendants made false and misleading statements about the Illinois lender's financial results and operations.

Along with Robbins Geller Rudman & Dowd LLP partners **Spencer A. Burkholz**, **Daniel Drosman** and **Luke O. Brooks**, Dowd's *Household* trial team crafted a compelling case, demonstrating how Household's CEO William Aldinger, along with other executives, violated the securities laws. Following the trial, the *Household* jury returned a liability verdict and determined per-share damages for each day between March 23, 2001 and October 11, 2002. Although the litigation is ongoing, the *Household* verdict is expected to yield in excess of $1 billion for the plaintiff class.

Reflecting this courtroom triumph, *California Lawyer* awarded Dowd its annual "CLAY" award in the area of securities law, highlighting his achievement in obtaining a rare verdict in a securities class action. Said partner **Darren J. Robbins**, "Mike Dowd is a lawyer's lawyer. He's not only one of the most talented lawyers I know, he is also one of the hardest working guys in the securities bar."

In addition to his achievements in *Household*, Dowd led the litigation team that obtained a record recovery of $925 million in the UnitedHealth stock options backdating scandal. Dowd also made significant contributions to shareholder recoveries in *AOL Time Warner*, *WorldCom*, *Qwest*, *Vesta*, *U.S. West* and the *Safeskin* cases, and served as the lead trial lawyer in *AT&T*, which settled after two weeks of trial for $100 million.

Having served for eight years as an Assistant U.S. Attorney in the Southern District of California, Dowd prosecuted numerous bank fraud, bribery, money laundering and narcotics cases, and received the Director's Award for Superior Performance as an Assistant U.S. Attorney.

Said Dowd, "I was honored to receive a CLAY award, but *Household* was a team effort. Spence Burkholz, Dan Drosman and Luke Brooks were critical players in achieving this result. Our Firm moved over twenty lawyers, paralegals and support staff to Chicago. In my view, our entire team shares in this award." ■

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—Michael J. Dowd, Robbins Geller Rudman & Dowd LLP

News Brief

The Corporate Library to Host the Second Annual "Must-Attend" Conference of the Year

The Corporate Library, the leading source for independent corporate governance information and analysis, is pleased to host its second annual **The Future of Corporate Reform 2010 Public Funds Forum**. The conference is designed to give representatives of public pension funds the knowledge and tools to create long-term value, repair the markets, and shape corporate reform. Robbins Geller Rudman & Dowd LLP, the premier securities litigation firm, and Gilardi & Co. LLC, class-action administration experts, will be sponsoring the event.

At the 2009 forum, representatives from public pension systems throughout the U.S., as well as from the U.K., Norway and Israel, met in San Diego, California to discuss the global financial crisis, how it affected their individual funds, and to find a way to take action. Former President Bill Clinton, John C. Bogle, founder of the Vanguard Group, Inc., Nassim Nicholas Taleb, author of the *New York Times* bestseller *The Black Swan*, Lucian Bebchuk, Professor of Law, Harvard Law School, and California State Treasurer Bill Lockyer were among the speakers at the conference. Various attendees praised the forum, saying that "the quality of the program, presentations, and the unparelled access to speakers was second to none."

This year's must-attend conference will educate representatives on public vs. private action. Attendees will be informed on practices to best fulfill fiduciary responsibilities and protect portfolio assets, and the benefits of institutional investor activism. The three-day event will be held at the Montage Resort in Laguna Beach, California. The distinguished speakers at the conference will include **Tom Brokaw**, American television journalist and former managing editor of *NBC Nightly News*, **Condoleezza Rice**, the 66th Secretary of State, and **Ben Stein**, economist and Hollywood personality. Other scholars, regulators and figures in the fields of finance, institutional investing, corporate governance and securities litigation will also speak at the conference.

Attendees will participate in educational sessions and informative panel discussions to obtain strategies for navigating the current and future challenges presented by today's economy. A variety of networking activities, including a California Beachfront Barbeque, golfing at Monarch Beach, sailing races on the Regatta, and dinner and dancing at Spanish Nights, will also be offered to allow participants to share ideas on an individual basis.

For the most current information about speakers, the sessions agenda or to register, please visit: **www.TCLconferences.com**.

Litigation Update

Motion to Dismiss Misclassification Snares Cadence

"This decision evidences a sensible judicial approach to evaluating the competing inferences from the facts pled."

In a significant ruling for defrauded investors of Cadence Design Systems, Inc., the Honorable Samuel Conti of the United States District Court for the Northern District of California issued an order denying defendants' motion to dismiss on March 2, 2010.

Cadence develops electronic design automation ("EDA") software and hardware for electronics companies worldwide. Lead plaintiff **Alaska Electrical Pension Fund** alleges that during the class period, defendants made false and misleading statements about Cadence's current and future financial condition and quarterly financial results. According to the complaint, defendants overstated the company's revenues and earnings by recognizing approximately $24 million of revenue in the first quarter of 2008 and $12 million of revenue in the second quarter of 2008 in violation of the company's stated revenue recognition policy and Generally Accepted Accounting Principles.

Based on corroborated accounts from 15 witnesses and defendants' admissions, plaintiffs allege that defendants knowingly caused the company to improperly recognize revenue on two large transactions by deliberately misclassifying the terms of the deals. Rather than recognizing the revenues on the two deals ratably over a number of quarters, defendants caused Cadence to recognize revenues up front to meet its forecasted revenue and earnings results for its first and second quarters of 2008. Subsequently, on October 22, 2008, after the market closed, the company announced an internal accounting review of its previously reported financial results and that the company expected that a restatement would be necessary. In response to this disclosure, Cadence's stock price declined over 25%. On December 11, 2008, Cadence issued its restated financial results, admitting the improper revenue recognition and "material weakness in internal control over financial reporting." These additional disclosures caused Cadence's stock price to decline another 22%.

In his March 2, 2010 order, Judge Conti held that plaintiffs' allegations sufficiently create a strong inference of scienter that satisfies the stringent pleading standard of the Private Securities Litigation Reform Act of 1995. The court notably recognized an account from a confidential witness who was not a former employee of the company, but instead an industry consultant who has substantial ties to the EDA industry. The court held that "it is a fact that an industry consultant could have credibly learned in the regular course of his business without relying on multiple layers of hearsay." In this regard, the ruling is in direct contrast to a growing number of opinions that discount confidential witness accounts as hearsay and not reliable enough to support an inference of scienter.

The court also found that a defendant who did not make any false financial statements directly may be liable for fraud solely because of his involvement in the transactions that led to the issuance of the false statements. The court noted that because the defendant negotiated the key contracts at issue, "he probably had control over the information that was passed along to those within Cadence who were responsible for classifying the transactions." The court extended the inference of scienter to those defendants who were not specifically alleged to have structured the transactions. The court noted that "[u]nder these peculiar facts, having penetrated the Defendants' executive circle, so to speak, Plaintiffs may support an inference that the other executive officers were aware of certain key facts about certain key deals."

"This decision evidences a sensible judicial approach to evaluating the competing inferences from the facts pled," commented Robbins Geller Rudman & Dowd LLP partner **Shawn A. Williams**. "The court clearly recognized the plausibility of one executive orchestrating the fraud and other executives communicating the resulting false statements to investors. This is a significant victory for the victimized shareholders."

In re Cadence Design Systems, Inc. Sec. Litig., No. 08-4966 SC, 2010 U.S. Dist. LEXIS 19003 (N.D. Cal. Mar. 2, 2010).

Helen Hodges to Assume Of Counsel Status at Robbins Geller Rudman & Dowd LLP

Helen J. Hodges recently announced that she will resign as a Robbins Geller Rudman & Dowd LLP partner, effective at the end of June. A senior managing partner, Hodges has played a key role in securing recoveries for injured shareholders in numerous high-profile securities class actions. Recently, Hodges focused on the prosecution of *Enron*, where a record $7.3 billion was recovered for the class. Hodges has agreed to remain "Of Counsel" to the firm to help with the claims administration process in *Enron*. Other prominent cases include *National Health Labs* ($64 million recovery); *Mattel* ($122 million recovery); and *Dynegy* ($474 million recovery).

Helen J. Hodges

Hodges is rated AV by Martindale-Hubbell (the highest rating available) and was selected as a Super Lawyer in *Southern California Super Lawyers 2007 – San Diego Edition*. An alumna of Oklahoma State University, Hodges has been lauded for her contributions to the university. In 2008, Oklahoma State University established a Plant and Soil Science Professorship in honor of her parents, Dillon and Lois Hodges, who raised wheat and cattle in Oklahoma's Major County for over 30 years. Hodges was elected to the Oklahoma State University Foundation Board of Governors in 2009.

Motion for Reconsideration *Apollo*: Executive Liability Rises from the Ashes

In a positive development for defrauded Apollo Group investors, a federal judge has vacated the court's previous ruling regarding the extent of executive liability in a class action case over Apollo's alleged stock option backdating practices. Apollo operates the University of Phoenix for-profit educational system.

In late February, Judge Robert Broomfield of the U.S. District Court for the District of Arizona granted in part lead plaintiff's motion to reconsider the court's March 2009 dismissal, vacating a decision that would have let five executives off the hook for their role in the alleged backdating fraud at Apollo.

The lawsuit accuses Apollo and certain officers and directors of issuing false and misleading financial statements that failed to account for, and covered up, Apollo's manipulation of stock option grants between 2001 and 2006 – a practice known as backdating. Lead plaintiff **Pension Trust Fund for Operating Engineers** and its counsel had challenged aspects of the court's 2009 dismissal, arguing that plaintiff had indeed satisfied the requirements of §20(a) of the Securities Exchange Act of 1934 regarding control person liability.

Reversing his prior order, Judge Broomfield commented, "Consistent with the plain language of section 20(a) and the Ninth Circuit case law construing it, it stands to reason that although control person liability under that statute cannot exist without a primary violation, section 20(a) does not require that the alleged controlling person be primarily liable under section 10(b)." Judge Broomfield also held that violations of §20(a) need not be pled in accordance with the heightened pleading standards set forth by the Private Securities Litigation Reform Act or Fed. R. Civ. P. 9(b), despite a split of precedent on this issue.

While plaintiff's motion for reconsideration was pending, plaintiff filed an amended complaint pursuant to the court's prior order. Defendants' motions to dismiss the amended complaint are pending with the court, and plaintiff expects a decision to be forthcoming in the near future.

"Judge Broomfield's decision to vacate the previously entered judgments was appropriate, and his extensive and cogent analysis of the law was clearly correct in holding that Rule 9(b) and the Private Securities Litigation Reform Act do not apply to a §20(a) claim," said **Christopher M. Wood**, an associate in Robbins Geller Rudman & Dowd LLP's San Francisco office. "We are gratified that the court saw through defendants' transparent attempts to advance an erroneous legal standard with respect to this issue."

Teamsters Local 617 Pension & Welfare Funds v. Apollo Group, Inc., No. CIV 06-2674-PHX-RCB, 2010 U.S. Dist. LEXIS 15232 (D. Ariz. Feb. 22, 2010).

Third Circuit Appeal Court Confirms *Constar* Class

Investors and their counsel scored a significant victory in the United States Court of Appeals for the Third Circuit on pleading requirements for Securities Act claims in an ongoing case against Constar. Plaintiffs had asserted claims arising under §11 of the Securities Act of 1933, which authorizes suits by purchasers of a security issued pursuant to a false or misleading registration statement and sets the presumed damages to be recovered from the issuer, its directors, and underwriters as the difference between the price paid or the offering price (whichever is lower) and the value of the security on the date of suit.

When the district judge certified the matter to proceed as a class action, defendants filed an interlocutory appeal seeking reversal of the class certification order. Defendants asserted that if the market for Constar stock was "efficient," then Third Circuit precedent operated on the facts of the case to foreclose any showing of loss to a class asserting §11 claims. Absent market efficiency, defendants argued, materiality and loss causation would somehow turn into individual issues, precluding class certification.

The Third Circuit's published opinion flatly rejects contentions that class certification in a §11 case requires findings regarding market efficiency, holding that §11 "does not require a showing of individualized loss causation, because injury and loss are presumed," and that "in a §11 case, plaintiffs do not bear the burden of proving causation." The court also rejected contentions that the district court failed to engage in the kind of "rigorous analysis" required by recent Third Circuit decisions that some in the defense bar have cited as making class certification far more difficult.

The *Constar* appeal was briefed and argued by Robbins Geller Rudman & Dowd LLP partner **Eric Alan Isaacson** and is being prosecuted in the district court by partners **Steve Pepich** and **Andrew J. Brown**. Commented Isaacson, "We will continue to aggressively pursue this litigation on behalf of defrauded investors."

In re Constar International Inc. Sec. Litig., 585 F.3d 774 (3d Cir. 2009). ■

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

Credit Rating continued from page 2

"The alarm bells of litigation sounded by institutional investors are also waking up the regulators and legislators in Washington."

In the past, rating agencies have sought protection under the First Amendment, arguing that ratings constitute their opinions and are therefore a protected form of free speech. Frequently, rating agencies used these arguments to escape liability.

A new shareholder-led class action, however, *Abu Dhabi Commercial Bank v. Morgan Stanley & Co.*, calls into question the rating agencies' attempts to shield their statements under broad First Amendment protection, paving the way for future claims. In *Abu Dhabi*, investors asserted a variety of common law claims, including fraud, negligent misrepresentation and breach of contract, based on their purchase and subsequent losses from instruments issued by Cheyne Finance PLC. Cheyne, a structured investment vehicle (SIV), included certain residential mortgage-backed securities, or RMBS, one of the alphabet soup of derivatives at the center of the recent market crash.

Plaintiffs in *Abu Dhabi* pointed out that "the Cheyne SIV's Senior Notes were 'top rated' notes .... Moody's rated the Senior Notes 'Prime-1' and 'AAA,' and S&P rated the Senior Notes 'A-1+' and 'AAA'.... The Cheyne SIV's Capital Notes received similarly high ratings of 'investment grade' and 'A3/A' by Moody's and S&P, respectively.... These ratings were then included in the Cheyne SIV's Information Memoranda and other Selling Documents that Morgan Stanley distributed to potential investors for the purpose of issuing up to twenty billion dollars in 'top rated' Senior Notes and three billion dollars in 'investment grade' Capital Notes."

Plaintiffs asserted that granting these "investment grade" ratings to risky and ultimately worthless financial instruments was misleading. Additionally, plaintiffs claimed that the agencies were driven by obvious and apparent conflicts of interest – the agencies had worked directly with investment banker Morgan Stanley to structure the notes so that they could then qualify for the highest ratings. In an obvious conflict, the credit agency's compensation was contingent upon the receipt of desired ratings for the notes.

In a groundbreaking decision, the New York federal court held that the plaintiffs had sufficiently alleged common law fraud and rejected defendants' attempts to dismiss the proceedings under protected speech or First Amendment claims. The court held that while agency ratings are typically afforded protection, absent malicious intent, by the First Amendment, "where a rating agency has disseminated their ratings to a select group of investors rather than to the public at large, the rating agency is not afforded the same protection."

Abu Dhabi is by no means the only case making headlines. In July 2009, the nation's largest public pension fund, the **California Public Employees' Retirement System ("CalPERS")**, commenced a suit against Moody's, Standard & Poor's and Fitch, the "Big Three" of the ratings industry.

Following CalPERS's lead, several state Attorneys General have also filed suits against rating agencies for allegedly violating state securities laws. The Attorneys General of Ohio and Connecticut have joined suits against rating agencies, citing "negligent, reckless and incompetent" work.

The alarm bells of litigation sounded by institutional investors are also waking up the regulators and legislators in Washington. New SEC rules require rating agencies to provide more information about their rating history and allow competing agencies to offer unsolicited ratings for structured finance products. Additionally, in October 2009, the U.S. House Financial Services Committee passed the "Accountability and Transparency in Rating Agencies Act," a bill intended to bring greater transparency to the credit rating industry.

The ultimate impact of the new investor-led litigation and regulation remains to be seen. However, it is clear that a major shift in the legal treatment of credit rating agencies' statements is underway, which ultimately will have serious implications for the investors who rely on them.

Abu Dhabi Commercial Bank v. Morgan Stanley & Co., 651 F. Supp. 2d 155 (S.D.N.Y. 2009). ■

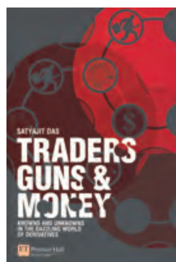
Fat Cat
Lloyd Blankfein

The *Wall Street Journal* calls Goldman Sachs CEO Lloyd Blankfein's $9 million all-stock bonus a stroke of "PR genius," because it is large enough to show that the investment bank can thumb its nose at how the Administration feels about the way TARP recipients used their bailouts, yet it is strategically modest compared to Blankfein's 2007 payday of $67.9 million.

The circumstances surrounding the recent government bailout reveal that Blankfein's reward may have more to do with insider connections than PR talent. In late 2008, two Goldman Sachs protégés, Secretary of Treasury Hank Paulson and President of the New York Federal Reserve Tim Geithner, helped engineer the unprecedented $85-billion bailout to AIG. Investigations revealed that up to $13 billion of AIG's bailout money was quietly transferred to Goldman Sachs, who had bet against AIG's disastrous gambles in the trillion-dollar global credit default swap fiasco. Interestingly, Goldman Sachs reported a net income of nearly the same amount – $13.4 billion – in 2009.

Blankfein publicly acknowledged that he and his bank "participated in things that were clearly wrong and have reason to regret." Unfortunately, Blankfein has not announced plans to return his bonus.

Recommended Reading



Traders, Guns & Money: Knowns and Unknowns in the Dazzling World of Derivatives

Satyajit Das
Prentice Hall, 2010

The world of derivatives – those "financial innovations," much-lauded by former Fed Chairman Alan Greenspan, that now annually trade at the staggering volume of $743 trillion. Some derivatives have three-letter names like CDO, CDS, and MBS; others are made up of currency or interest rate "swaps." As the world learned during the AIG meltdown, derivatives seem to be at the heart of the global financial disaster. The technical aspects of the instruments, however, are only part of the equation. The human side is far more interesting.

In *Traders, Guns & Money*, author Satyajit Das utilizes his 25 years in the financial markets to weave a story full of insider-derived information, delivered with sardonic wit. You know you're picking up a good read when you come across a sentence like: "To enter the world of derivatives trading is to enter a realm of beautiful lies."

As it turns out, making a lot of money with derivative instruments seems to require peddling falsehoods. Das describes the prevarication-filled structure of one of his former investment bank employers in a memorable section:

> "Look, it's quite simple," I said, breaking down the hierarchy of the trading floor. "There are sales people – they lie to clients. Traders lie to sales and to risk managers. Risk managers? They lie to the people who run the place – correction, think they run the place. The people who run the place lie to shareholders and regulators." I remembered our quantitative colleagues. "I forgot the quants – our fabulous rocket scientists! When last heard from, they were trying to develop a model for lying."
>
> "And clients?" one of the trainees asked tentatively. I thought about it for a few seconds. "Clients. They lie mainly to themselves!"

This colorfully written book has recently been updated with a revised edition to reflect the latest financial disasters. Equally comfortable referencing Shakespeare and Warren Zevon, Mr. Das organizes his book into a series of entertaining essays, beginning with a beautifully embellished morality tale of two Indonesian noodle-makers who were lured into buying foreign currency swaps by sharp investment bankers. Not surprisingly, the bankers made a killing off the deals, while the noodle-makers inadvertently collapsed their core business.

Optimists beware: according to Das, "Few, if any, lessons have been learned, especially by bankers," and the current lack of appetite for serious financial reform means the cycle may repeat itself. (In fact, the derivatives-fueled real estate bubble, now deflating, appears to be re-inflating elsewhere.) The reader comes away from *Traders* entertained, informed, and likely more than a little outraged. ■

Cooper continued from page 1

Judge Carney also found that there are disputed issues of fact about whether defendant Bender's inventory statements were knowingly false and misleading when made. In reaching this conclusion, Judge Carney cited internal Cooper and Ocular communications and memoranda that conflict with defendants' public statements regarding inventory. The court held that "[t]hese conflicts persuade the Court that there is a dispute of material fact as to whether Mr. Bender's inventory statements were false or misleading and would be material to an investor. This is also sufficient to create a dispute [of fact] as to whether the statements were made with scienter."

With respect to defendants' statements regarding the sales force integration, the court rejected arguments that the statements were not actionable and found that there are disputed issues of fact concerning whether Bender's statements were knowingly false when made. In reaching this conclusion, Judge Carney noted that the statements were in conflict with reports submitted by sales representatives in the field, who repeatedly complained to upper management that the companies were not fully integrated.

Judge Carney also denied defendants' motion, in substantial part, as to defendants' statements regarding silicone hydrogel contact lens products. Specifically, Judge Carney cited internal communications and memoranda showing that at the same time defendants were assuring investors that new silicone hydrogel products were having no impact on Cooper's business, internally defendants acknowledged that they were "out of play" without a silicone hydrogel product, and in the long run "could be at a major disadvantage" without one. Judge Carney found this evidence "sufficient to create a dispute of material fact as to whether Cooper's representations … concerning silicone hydrogel competition were false or misleading and material."

Finally, the court found that there are genuine issues of fact as to whether defendants Bender, Weiss, and Fryling substantially participated or had "intricate involvement" in the preparation of the alleged false statements. The court also found that there are issues of fact about whether Bender and Weiss could be considered to have exercised control over the alleged securities law violations under §20(a). Although the court found that Fryling could not be deemed a control person for purposes of §20(a) liability, Fryling remains a defendant in the case due to his demonstrated substantial participation and intricate involvement in the preparation and dissemination of the alleged false statements.

"We are really pleased that the court agreed with plaintiffs. We are fully prepared to take this to trial, which is currently scheduled for July 6 of this year," commented **X. Jay Alvarez**, one of the lead partners on the case.

In re Cooper Sec. Litig., No. SACV06-00169-CJC(RNBx), 2010 U.S. Dist. LEXIS 20115 (C.D. Cal. Mar. 4, 2010). ■

Calendar of Upcoming Events

April 11-13, 2010

Council of Institutional Investors (CII)
Spring Meeting – "Opportunity Knocks"

Omni Shoreham Hotel
Washington, D.C.

This meeting will educate members, policymakers and the public about good corporate governance, shareowner rights and related investment issues. Good corporate governance is a system of checks and balances that fosters transparency, responsibility, accountability and market integrity. Member funds are major long-term shareowners with a duty to protect the retirement assets of millions of American workers.

For more information, visit: www.cii.org

April 18-21, 2010

AFL-CIO Building & Construction Trades Department
2010 Legislative Conference

Washington Hilton and Towers
Washington, D.C.

This conference will highlight the many challenges and opportunities members face in order to rise together and influence change in our industry for working men and women.

For more information, visit: www.bctd.org

April 22-23, 2010

Institute for Law & Economic Policy (ILEP)
ILEP Conference – "Protection of Investors in the Wake of the 2008-2009 Financial Crisis"

The Regent Palms
Turks & Caicos

The goal of the Institute for Law and Economic Policy (ILEP) is to formulate policy positions on issues involving the administration of civil justice within the American legal system.

For more information, visit: www.ilep.info

May 2-6, 2010

National Conference on Public Employee Retirement Systems (NCPERS)
NCPERS 2010 Annual Conference and Exhibition

Wynn Las Vegas Hotel
Las Vegas, NV

Join more than 1200 trustees, administrators, state and local officials, investment officers, financial officers, pension staff and regulators. Benefit from the wide selection of superior educational programs and dynamic speakers, and the opportunity to network with money managers, investment service providers and public fund colleagues from across the nation.

For more information, visit: www.ncpers.org

May 10-12, 2010

James R. Hoffa Memorial Scholarship Fund
JRHMSF 9th Annual "Drive For Education" Invitational Golf Tournament

Bally's Hotel & Casino
Las Vegas, NV

Join hundreds of Teamsters and help pay for scholarships for outstanding Teamster family children realizing a dream and moving on to a bright future.

For more information, visit: www.teamster.org

June 2-3, 2010

Information Management Network (IMN)
IMN 5th Annual Illinois Public Employee Retirement Systems Summit

Marriott Chicago Downtown Magnificent Mile
Chicago, IL

This summit has been designed to provide a platform for learning, networking, and thought leadership on topics critical to managing Illinois pension funds. The summit will give Illinois pension plans the opportunity to exchange ideas and learn about progress being made in public pension plan asset management.

For more information, visit: www.imn.org

June 7-9, 2010

International Corporate Governance Network (ICGN)
2010 ICGN Annual Conference
"The Changing Global Balances"

Fairmont Royal York Hotel
Toronto, Canada

This conference will inform institutional investors, business leaders, policymakers and professional advisors on best practice guidance, leadership development and emerging issues in corporate governance.

For more information, visit: www.icgn.org

June 10, 2010

Information Management Network (IMN)
IMN's 9th Annual European Summit on Corporate Governance and Responsible Investment

Sheraton Stockholm
Stockholm, Sweden

This conference will provide a wealth of information on the implementation of environmental, social and governance factors in investment management through discussions, case studies and profiles presented by leading public pension scheme executives, trustees and fund managers.

For more information, visit: www.imn.org

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