



2009 MID-YEAR REVIEW - SECURITIES LITIGATION AND ENFORCEMENT

JULY 9, 2009

Agenda

- Introduction
- Presentation
 - Lyle Roberts, The 10b-5 Daily
 - Tom Gorman, SEC ACTIONS
 - Francine McKenna, re: the Auditors
 - Kevin LaCroix, The D&O Diary
 - Bruce Carton, Securities Docket
- Questions and Answers — (*anonymous*)
- Slides — now available on front page of Securities Docket
 - > www.securitiesdocket.com
- Wrap-up

Webcast Series

- Series of webcasts
- www.securitiesdocket.com/webcasts
- Next: July 21— **Securities Litigation Issues Facing Institutional Investors**

Panel



Lyle Roberts



Francine McKenna



Tom Gorman



Kevin LaCroix



Bruce Carton



Lyle Roberts – The 10b-5 Daily

- Three Most Significant Developments of Jan. 2009 to June 2009
 - Supreme Court grants cert in *Merck* case
 - True financial condition theory sinks like a stone
 - Is the *Williams* case the future of loss causation?
- Three Most Interesting Developments of Jan. 2009 to June 2009
 - The PSLRA's Safe Harbor makes a comeback
 - Pay-to-play in the news
 - Start up your time machine - 2007 cases
- One (Not All That) Bold Prediction for June 2009 to Dec. 2009
 - Supreme Court will grant cert in *National Australia Bank* case (and the record for amicus briefs in a securities law case will be broken)



Tom Gorman - SEC ACTIONS

- Recent key events and cases
 - The appointment of Mary Schapiro as Chairman
 - High profile Enforcement failures
 - The reorganization of enforcement
 - SEC v. Mozilo
 - The Siemens FCPA case
 - Retirement Systems of Alabama 21(a) report
 - SEC v. Lucent Technologies



Francine McKenna
Managing Editor of

*re:*The Auditors

■ Three Most Significant Developments of Jan-June 2009:

- Flood of suits nipping at heels of firms “global network” construct. Agent-agency/manage and control issues argued against international firms.
 - BES v. BDO International: Pyrrhic victory for BDO International but record \$571 million judgment re: BDO Seidman still stands pending appeal.
 - Two more Big 4 subject to agency-agent manage and control suits - SACPF, et al v. Deloitte International (and Grant Thornton Int’l) and \$1 billion for New Century Trustee v. Parmalat.
 - Biggest ever suit against PwC International re: Satyam expected. Some traditional suits already filed re: ADRs.
- 43 Madoff Big 6 auditor suits to date: KPMG, PwC, EY, BDO and RSM and 1 v. Rothstein Kass. Bermuda, Caymans, Tortuga and well as International firms get mentions.
- PwC settles one AIG suit, gets out of jail free via NY version of *in pari delicto on another*, named in new policyholder suit, and re-ups as auditor for another year.



Francine McKenna
Managing Editor of

*re:*The Auditors

■ **Three Plus Most Interesting Developments in Jan-June 2009**

- The Satyam Bollywood “Who’s Your Auditor” Soap Opera: Price Waterhouse India Bangalore, PwCIL, Lovelock and Lewes, PwC US, Idearc Chap 11, and two PW India partners still jail since Jan.
- Auditors immunizing from most subprime suits by claiming, “assertions of fraud are unjustified against those who were doing their best under circumstances that were exceedingly difficult...” The Jim Young defense.
- Class action against PwC in CA may actually be successful, changing model of no OT to non-licensed associates for all.
- Deloitte still suing their Vice Chairman for insider trading. Admitted he’d violated independence policy >250 times over a 4-year period.
- KPMG settles with Vitesse over options backdating and KL asks: Any other gatekeeper settlements? Yes, Micrel with Deloitte 3/07 and KPMG with Brocade 8/06. New suit ESSI against PwC just filed in June. Will settle because CEO who blamed PwC already in jail. GC for McAfee was recently acquitted.

- **One Bold Prediction for 2009:** Satyam v. PwC International “manage and control” suit will be biggest yet.



Kevin LaCroix – The D&O Diary

- **Three Most Significant Developments: January-June 2009**
 - **SCAs Decline in 2Q Relative to 1Q09**
 - **Securities Suits Remain Concentrated in Financial Sector**
 - **Uncommon Claimants and Defendants**

- **Three Most Interesting Developments: January-June 2009**
 - **Failed Banks Continue to Surge (esp. the last two weeks)**
 - **Continued Surge of Madoff-Related Litigation**
 - **D&O Insurance Remains: Tale of Two Markets**



Kevin LaCroix – The D&O Diary

◎ Bold Prediction?

- SCA Filings Will Bounce Back in the Second Half, with Increased Filings Outside the Financial Sector



Bruce Carton- Securities Docket

- Three Most Significant Developments: January-June 2009
 - **Madoff Receives the “Full Bernie” (150 Years)**
 - **Surge in International Securities Enforcement: UK, Canada, Asia...**
 - **Major Changing of the Guard at SEC**

- Three Most Interesting Developments: January-June 2009
 - **Madoff bought no securities at all for decades**
 - **SEC actively “lawyering down”**
 - **Rise of the litigation funders (IMF; Juridica)**



Bruce Carton- Securities Docket

- **Bold Predictions?**
 - **OCIE Moves to New York**
 - **No more “Bernards”**

Bold Prediction Update

(from January 2009)

- **Kevin:** “SCA filings exceed 2002 levels, driven by Credit Crisis Litigation Outside Financial Sector and Madoff Litigation.”
- **Francine:** “Credit/financial crisis suits will finally use the absence of “going concern” opinions prior to big failures to push at least one Big 4 firm to brink of failure.”
- **Tom:** “Significant re-shaping of SEC Enforcement Division by mid-year.”
- **Bruce:** “90% of big law firms begin to use Twitter for public relations”

Questions?

Thank You

Thank you for attending this webcast.

