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# Trends in Claims Against Lawyers

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*"About half the practice of a decent lawyer is telling his clients that they are damned fools and should stop."*

*—Elihu Root, Lawyer, Statesman, Nobel Laureate*

Historically, the SEC has been extremely cautious about prosecuting civil claims against attorneys based on their legal advice to corporate clients. Perhaps out of concern that either its enforcement powers were not sufficiently strong,[1] or that the facts were not sufficiently strong, the SEC brought only a handful of enforcement actions against lawyers prior to 2002.

In the wake of the Enron and Worldcom debacles, the SEC began stepping up its enforcement actions against lawyers and accountants, and also began bringing more primary liability claims against lawyers under antifraud statutes. In September 2004, the then-sitting Director of the SEC's Division of Enforcement announced the SEC's intent to target attorneys in enforcement actions, stating that the pursuit of lawyers as "gatekeepers" was "the most targeted and effective way of using the agency's limited enforcement resources [and therefore] we have stepped up our scrutiny of the role of lawyers in the corporate frauds we investigate."[2] That clarion call has been renewed by the current Director of Enforcement, Linda Thomsen, in recent remarks concerning the stock option backdating scandal: "we will still look at lawyers," she declared.[3]

While lawyers have been placed "on notice" that their conduct was under the SEC microscope, the SEC nevertheless has taken the stance publicly that it would not prosecute attorneys based on acts of simple negligence.[4] "If a securities lawyer is to bring his best independent judgment to bear on a…problem, he must have the freedom to make innocent—or even, in certain cases, careless—mistakes without fear of legal liability or loss of the ability to practice before the Commission."[5] In line with this philosophy, the SEC primarily has targeted lawyers who engaged in or were directly involved in the conduct that resulted in the violation, and therefore most cases against lawyers are based upon the attorney's aiding and abetting the company's securities violations (where the claim requires actually awareness of the improper conduct).

 

## 2005 Enforcement Actions

In 2005, the number of SEC enforcement actions against lawyers increased.[6] The SEC's Chief Litigation Counsel explained that targeting gatekeepers provided the "best bang for the buck" given a gatekeeper's ability to prevent many cases of fraud before they occur.[7] As late as April 2005, however, SEC officials were not publicly deviating from past statements that the "Commission ordinarily will not sanction lawyers under the securities laws merely for giving bad advice, even if that advice is negligent and perhaps worse ."[8] The SEC Chief Counsel stated that the Staff was looking at cases in which the lawyer "knows something is wrong, but went in the wrong direction."[9]

Despite these public assurances, a few of the 2005 SEC enforcement actions looked as though they were based on conduct very close to professional negligence. The most notorious example was the SEC administrative action in *In re Ira Weiss*.[10] The SEC sued Ira Weiss for legal work he performed in connection with a municipal bond offering by a Pennsylvania school district. Weiss was acting solely in a legal advisor capacity when he issued an unqualified opinion that the bonds were issued in manner that would result in the interest gained on the bonds would qualify for a federal income tax exemption. Later, the IRS disagreed with the tax exempt status, which resulted in an SEC investigation.

In its administrative proceeding against Weiss, the SEC claimed that Weiss knew or should have known that the bond's tax exempt status was in serious doubt, and therefore his opinion used in the Official Statement used to sell the bond offering was misleading. In April 2004, the Administrative Law Judge (ALJ) dismissed the charges by concluding that Weiss had acted with the requisite standard of care, and therefore did not violate the securities laws.

However, in December 2005, the SEC effectively reversed the ALJ, and found that Weiss had violated Sections 17(a)(2) and 17(a)(3) of the Securities Act. In so concluding, the SEC remarked that Weiss' conduct was "at least negligent" and a departure from "reasonable prudence." Notably, Sections 17(a)(2) and (3) of the Exchange Act allow liability to be based on merely negligent conduct.

To the legal community, words like "reasonable prudence" and "at least negligent" certainly sound like Weiss was found liable for professional negligence, and members of the bar called on the SEC to clarify its position.[11] While the SEC did not issue an official clarification, the Staff has continued to say that the SEC is not targeting lawyers who are "merely negligent in giving legal advice," but will only bring cases where there is egregious conduct on the part of the attorney.[12]

On November 28, 2006, the US Court of Appeals for the District of Columbia affirmed the SEC's decision against Ira Weiss. In upholding the SEC's ruling, the court found that

"Weiss was responsible for misrepresentation and omissions in the Official Statement and in his legal opinions." The Court noted that "under the securities laws, a statement of opinion includes an implied representation that the speaker rendered the opinion in good faith and with a reasonable basis. [citation omitted]. Good faith alone is not enough. An opinion must have a reasonable basis, and there can be no reasonable basis for an opinion without a reasonable investigation into the facts underlying the opinion." The appellate court's emphasis on "reasonable basis" and "reasonable investigation" sound very much like a negligence standard, and the court decision noted that under Sections 17(a)(2) and (3), negligence was sufficient to establish liability. Nevertheless, the appeals court decision appears to focus more on the fact that Weiss knew that his opinions were to be published to and relied upon by bond purchasers, and that the misleading information in the Official Statement was material to investors. Thus, the appellate decision can be read to require something akin to "negligence plus."

## 2006 Enforcement Actions

In the past year, the SEC has continued to bring enforcement actions against lawyers.

However, the fear that Ira Weiss would open the door for enforcement actions based on mere negligence appears unfounded, at least so far. Most of these actions involve direct involvement by the lawyer in the financial or accounting fraud, direct violations of insider trading laws by the lawyer, or other conduct that fall within the scope of "primary liability". Almost all of the 2006 reported decisions involved settled actions, and almost all of those were settled under both Section 17(a) of the 1933 Act (which may be based on mere negligent conduct) and Section 10(b) of the 1934 Act (requiring scienter). Thus, the 2006 cases can be read consistently with the Ira Weiss appellate decision to require something more than merely negligent conduct by the lawyer to trigger an SEC enforcement action. Following are several examples.

### *SEC v. Paul J. Silvester et al., United States District Court for the District of Connecticut*

On February 26, 2006, the Connecticut federal district court entered a consent judgment against Jerome L. Wilson, a retired attorney formerly with the New Your City firm of Rogers & Wells, LLP, in connection with an alleged kickback scheme. The complaint alleged that Wilson aided and abetted a portion of the scheme in which Paul J. Silvester, the former Connecticut State treasurer, awarded investments of hundreds of millions of dollars of

state pension fund money in exchange for lucrative fees paid by the private equity firms to Silvester's friends and political associates. According to the complaint, Wilson, who was one of the equity firms' attorneys, allegedly knew that he was participating in a quid pro quo by arranging for a finder's fee to be paid to someone for a transaction that was already underway, and that Ben Andrews Jr., who was the recipient of the fee and a political associate of Silvester's, was paid for essentially no work. Wilson assisted Silvester and Landmark by arranging for the fees to be paid, and for arranging for his law firm to act as a conduit for the payments. Wilson consent to a permanent injunction under Section 17(a) of the 1933 Act, and Section 10(b0 of the 1934 Act. As well, Wilson paid a penalty of $50,000.

The Commission has a related action against Charles V. Spadoni, former general counsel and vice-president or Triumph Capital Group, Inc., another equity firm involved in the alleged scheme, which is still pending.

### *Paul Simmons et al., Litigation Release No. 19541/ January 24, 2006*

On December 6, 2005, the U.S. District Court for the Middle District of Florida issued a Final Judgment in the SEC's civil suit against Eric P. Littman, a securities attorney. According to the complaint, Littman made unregistered sales of securities as part of a reverse-merger into a shell company that was 95% owned by Littman. As part of the merger, Littman secretly sold nearly all of the shares of the shell company to company insiders, including its executive officers, attorneys and promoters. Because these sales were not registered with the Commission, Littman's sales violated Section 5 of the Securities Act. Littman was ordered to pay disgorgement of $120,000 and a penalty of $5,600. He was enjoined from further violations of Section 5 of the 1933 Act.

In a related case, the outside securities counsel for Nutraceutical, John Zankowski, was also charged with securities fraud and registration violations for participation in the alleged stock manipulation scheme. [See Litigation Release No. 18968 (*In the Matter of John B. Zankowski*)].

### *SEC v. Symbol, Inc., et., Litigation Release no. 19585*

On February 7, 2006, a consent judgment was entered against Leonard Goldner, the former general counsel and senior vice-president of Symbol Technologies Inc., ("Symbol").

According to the complaint, Goldner and other executives engaged in a fraudulent scheme to inflate revenue and earnings in order to create the false appearance the Symbol had met or exceeded its financial projections. While the fraud was proceeding, Goldner allegedly manipulated stock option exercise dates to enable senior executives, including himself, to profit at the company's expense. Without board approval or public disclosure, Goldner allegedly deviated from the company's policy of using the actual exercise date, and attempted to cover up this fraud by having his staff alter documents to reflect phony exercise dates. He consented to a permanent injunction under Section 17(a) of the 1933 Act, and Sections 10(b), 13(a), 13(b), 14(a) and 16(a) of the 1934 Act. In a parallel criminal case, Goldner paid a fine of $2 million following a guilty plea.

### *SEC v Patrick A. Grotto, Mark B. Leffers and Jon M. Bloodworth, Litigation Release No. 19609*

On February 27, 2006, a consent judgment was entered against Jon M. Bloodworth, former general counsel and a director of Busybox.com, Inc. ("Busybox"). In its complaint, the SEC alleged Bloodworth engaged in a fraud to close Busybox's initial public offering by purchasing the remaining shares that the underwriter had failed to sell to bona fide investors.

The complaint alleged that Bloodworth and others funded the purchase with payments styled as bonuses and legal fees, thereby reducing the money raise in the IPO by almost 20%. Bloodworth consented to a permanent injunction under Section 17(a) of the 1933 Act and Section 10(b) of the 1934 Act. He also paid disgorgement of $105,000, and accepted a bar order for five years.

### *SEC v. Bruce Hill, et al., Litigation Release No. 19617*

On March 2, 2006, a consent judgment was entered against Bruce G. Hill, former general counsel of Inso Corporation. According to the complaint, Hill and others arranged a sham transaction to increase Inso's revenues for the third quarter 1998. Then, Hill concealed the terms of the sale from Inso's finance department. As a result, the complaint alleged that the third quarter financial statements reflected an additional $3 million as a result of this allegedly sham sales transaction. On January 24, 2006, Hill was sentenced to a prison term of one year and one day followed by supervised release for two years as a result of criminal charges based on the same conduct. In the SEC action, Hill consented to a permanent injunction under Section 17(a) of the 1933 Act, And Sections 10(b), 13(a), and 13(b) of the 1934 Act. Hill also paid disgorgement of $66,000, and a permanent bar from serving as an officer of any company registered under Section 15(d) of the 1934 Act.

### *SEC v. Ronald Ferguson et al., Litigation Release 19552*

On February 2, 2006, the SEC filed an enforcement action against Robert Graham, a lawyer, and others, who were senior executives of General Re Corporation and American International Group, Inc. (AIG). According to the complaint, Graham and others created two sham reinsurance contracts, which included the creation of phony documents for the purpose of providing apparent support for the false accounting entries AID made on its books. Graham and the others were charged with aiding and abetting AIG's alleged violations of Sections 10(b) and 13(a) and (b) of the 1934 Act. The Commission's investigation is continuing.

### *SEC v. David T. Leboe and Dale G. Rasmussen Litigation Release No. 19623*

On March 27, 2006, the SEC filed charges against Dale G. Rasmussen, a former Enron attorney, for violating the antifraud provisions of the securities laws and with aiding and abetting Enron's securities violations. According to the complaint, Rasmussen and others carried out a scheme to recognize an immediate gain based on appreciation of an asset, in circumvention of GAAP accounting rules. Further, the SEC alleged that Rasmussen negotiated the terms of the transaction, drafted several key documents, and worked closely with Enron's accountant to ensure that the wording in legal documents did not jeopardize Enron's efforts to circumvent GAAP. Rasmussen consented to a permanent injunction under Sections 10(b) and 13(b) of the 1934 Act, and paid a civil penalty of $30,000.

### *SEC v. Lindsey P. Vinson and Clyde R. Parks, Litigation Release No. 19937*

On December 6, 2006, The SEC settled an action against two attorneys, Lindsey P. Vinson and Clyde R. Parks, for their roles in a fraudulent scheme relating to the common stock of Moliris Corp. (Moliris). In the complaint, the SEC alleged that Vinson created a scheme to mislead investors into thinking that he had transferred ownership of Moliris to his personal lawyer, Parks, when he had not. Moreover, the complaint alleged that Vinson concealed his continuing control of Moliris, his SEC disciplinary record, and his prior bankruptcies. As a result, Vinson consented to judgment enjoining him from violating Sections 10(b) and 13(b)(5) of the 1934 Act, and from aiding and abetting violations of Section 13. Vinson also paid a penalty of $200,000, and agreed to pay disgorgement of $200,000. Parks, by contrast, had little or no involvement with Moliris other than signing and certifying Moliris' SEC filings.

Nevertheless, he is charged with violating Section 10(b) and 15(b)(5), and aiding and abetting Section 13 violations.

### *SEC v. Herula et al, Litigation Release No 199900*

On November 6, 2006, a consent judgment was entered against Charles Sullivan, general counsel and vice-president of Brite Business Corporation, for participating in a fraudulent offering scheme that raised at lease $52 million from investors. The SEC alleged that Sullivan assisted and supported a fraudulent trading program, disbursed certain investor funds, and took certain investor funds as "loans." Sullivan agreed to a permanent injunction under Section 17(a) of the 1934 Act, and Section 10(b) of the 1934 Act. He also agreed to pay disgorgement of over $900,000, and a civil penalty of $120,000.

### *SEC v. Biopure Corporation, et al, Litigation Release No 19852*

On September 12, 2006, the SEC announced consent judgments against Biopure Corporation and its general counsel, Jane Kober. The complaint alleged that Biopure falsely described and failed to disclose FDA comments about its synthetic blood for a period of over eight months. The complaint further alleged that Kober substantially participated, reviewed, and/or approved of many of these misleading statements. During this time, Biopure reported false good news and raised an additional $35 million from investors. According to the complaint, when the truth finally was revealed to the market, Biopure's stock dropped almost 66%. Kober consented to a permanent injunction from further aiding and abetting violations of Section 13(a) of the 1934 Act. The Commission dismissed allegations brought against her under Sections 17(a) of the 1933 Act, and Section 10(b) of the 1934 Act.

### *SEC v. Thomas J. Bucknum, United States District Court for the District of Massachusetts, Civil Action No. 06-10065 PBS*

On January 12, 2006, the SEC filed a settled enforcement action charging Thomas J. Buckham, general counsel of Biogen Idec Inc., with insider trading. According to the complaint, on February 18, 2005, Buckham had told his broker to exercise his stock options and sell the shares when the price hit $68 a share. At a meeting later that day, Buckham allegedly learned material, non-public information that was likely to have a negative impact on Biogen stock.

After leaving the meeting, Buckham allegedly had a second conversation with his broker wherein he instructed the broker to sell the shares immediately at the current market price of $67 a share. Ten days later, when Biogen publicly announced the adverse information, Biogen's stock declined more the 42% to $28.63. Bucknum consented to a permanent injunction under Section 17(a) of the 1933 Act and Section 10(b) of the 1934 Act, and agreed to pay disgorgement of over $1.9 million. He also

agreed to a civil penalty of $969,232, and a five-year bar order.

### *SEC v. Robert J. Downs, Jr. and Stephen J. Messina, Litigation Release No. 19698*

On May 15, 2006, the court entered a consent judgment against attorney Robert J. Downs, a partner in a Philadelphia law firm, for allegedly supplying a friend, Stephen Messina, with material inside information about a corporate client of his firm. While in possession and based upon this information, Messina allegedly purchased options and realized a profit of over $300,000. Messina consented to a permanent injunction under Section 10(b) of the 1934 Act, and paid a civil penalty of $308,335.

### *SEC v. Mitchell Drucker and Ronald Drucker et al., Litigation Release No. 19587*

On March 2, 2006, the SEC filed insider trading charges against Mitchell Drucker, general counsel of NBTY, Inc. The complaint alleged that Drucker sold his stock after learning material non-public information that NBTY's fourth quarter earnings would be sharply lower than expected. The SEC also alleged that Drucker shared this information with his father, who sold his shares based upon this information. The action is still pending.

## SEC Actions Against Lawyers Related to Stock Option Backdating

The SEC Enforcement Division currently is investigating over 100 matters relating to potential stock option backdating. As of October 5, 2006, the SEC has only brought two enforcement actions.[13] However, Linda Chatman Thomson recently warned, "We are looking at directors; we will still look at lawyers…[w]e look at all the roles" where there are investigations into conduct regarding backdating.[14]

In at least one out of the two 2006 backdating enforcement actions brought by the SEC, Comverse, an attorney is named as a defendant. In *SEC v. Jacob Alexander, David Kreinberg, and William F. Sorin, Litigation Release No. 19796*, the SEC charged the former general counsel of Comverse, Willliam F. Sorin, with participation is a scheme to routinely backdate stock option grants.[15] According to the Complaint, management went so far as to create a secret slush fund by making backdated options grants to fictitious employees. In entering a guilty plea on October 24, 2006 the former Comverse CFO told the court that "I was asked by the CEO to bring him a printout of the company's trading prices over a past year period to enable him to select the 'as of' date that would be used for the exercise price of the option grant."[16] In entering his own guilty plea a few days later, Sorin admitted that "I knew what [the CEO] was doing was wrong and did not challenge his conduct or share my knowledge with the board of directors and auditors of the company."[17] The SEC action seeks relief against Sorin under Sections 10(b), 13(b), 14(a) and 16(a) of the 1934 Act, and aiding and abetting violations under Sections 13(a) and 13(b) of the 1934 Act. The SEC action is pending.

Additional enforcement actions focusing on the conduct of in-house counsel can be expected. At least a half dozen companies have announced the resignations or terminations of their general counsels in the midst of high-profile stock option backdating inquiries, including Apple Computer, McAfee, Mercury Interactive, CNET, Monster Worldwide, and Boston Communications.

## Other Federal Regulatory Actions Against Lawyers

In recent actions, the OCC and FDIC brought actions against the Greenberg Traurig law firm, alleging that it participated in covering up illegal actions of former management of Hamilton Bank, a Miami-based bank that collapsed in the 1990s. The OCC began its examination of Hamilton Bank in 1998, and closed the bank in 2002. Before then, the law firm was engaged by the Audit Committee of the Bank to investigate matters, and allegedly delivered false and misleading reports that exonerated management. In October 2006, the law firm agreed to settle claims brought by OCC against it, followed by a recent settlement with the FDIC for a reported $7.6 million.

## Private Actions Against Lawyers

Following the collapse of Enron, it was widely reported that the plaintiffs' bar had targeted Enron's outside lawyers for having participated in the creation of fraudulent transactions. Claims against Vinson & Elkins were allowed to proceed past the pleading stage.

Recently, however, the University of California Regents asked the court to dismiss Vinson & Elkins from the class action suit, and Judge Harmon has scheduled a hearing on that request for January 19, 2007.[18] The Enron example suggests that plaintiffs' ability to bring claims for primary liability against lawyers is challenging even in the most high profile fraud settings.

## Developments Regarding "Reporting Out" Obligations of Lawyers

Since passage of the Sarbanes-Oxley Act, much ink has been spilled on the SEC rulemaking under Section 307, the so-called "reporting up" provision that requires attorneys who suspect that laws have been violated must "report up" to management and the board, and if necessary engage in a "noisy withdrawal" if the attorney is not satisfied with the remedial steps taken by the company. The issue of whether an attorney also must "report out" to the SEC or other government agency if the attorney believes that there is ongoing unlawful conduct. The American Bar Association

task force has strongly advocated that no SEC regulation should compel an attorney to "report out," and that such rulemaking, if any, be left to the states.

If the "reporting up" provisions were the first shoe to drop, the next shoe to drop may be new regulations in various states mandating or permitting some form of mandatory "reporting out." Indeed, in December 2006 the New York City Bar Association issued a report recommending that the state amend its ethical rules to allow attorneys to disclose a corporate client's criminal or fraudulent conduct to regulators when the company's board of directors fails to do so.[19]

## Conclusion

2006 cases brought by the SEC against lawyers illustrate that the Staff has taken a somewhat measured approach to the issue of lawyer liability, and is generally reserving enforcement actions for fact patterns where lawyers were directly involved in the securities violations, or where the lawyer's securities law violation was largely divorced from the provision of legal advice to the corporation (e.g.—insider trading).[20] As the SEC continues its stock option backdating investigations, we are likely to gain keener insight into the dividing line the Staff is drawing between lawyer conduct that is merely negligent, and conduct that invites an enforcement action. Former SEC General Counsel Giovanni Prezioso stated that the critical factor was "the extent to which the decision-making process depended on the lawyer:"[21]

> If a lawyer makes a legal judgment about an issue that cannot fairly be viewed as immaterial and fails to inform anyone else at the company of the potential legal risk—in other words, if the lawyer doesn't advise anybody about anything—it will be much more difficult to argue that the lawyer played a purely advisory role. Rather, the lawyer's continuing participation in the activity without providing advice to others may, in some cases, constitute part of a course of conduct that effectively makes the ultimate business decision for the company.

As for the exposure of lawyers to other types of regulatory or private claims, 2006 provided little proof that lawyers are becoming high profile targets. Indeed, the numbers of cases brought against lawyers in those areas are negligible. Overall, lawyer liability can neither be discounted, nor overstated, as a risk factor to practicing attorneys going forward.

### Notes

1 Prior to 2002, the SEC typically disciplined lawyers under its Rules of Practice by instituting administrative proceedings to either suspend or disbar them from practicing before the Commission.

2 Stephen M. Cutler, Director of the SEC Division of Enforcement, The Themes of Sarbanes-Oxley as Reflected in the Commission' Enforcement Program, Address at the UCLA School of Law, Los Angeles, Cal. (Sept. 20, 2004), available at http://www.sec.gov/news/speech/spch092004smc.htm.

3 Remarks of Linda Chatman Thomsen, SEC Director of Enforcement, speaking at the Practicing Law Institute, Corporate Accountability Report (BNA) (Nov. 17, 2006).

4 See *In the Matter of William R. Carter & Charles J. Johnson, Jr.*, 22 SEC Docket 292, Rel. No. 17597 (1981) (Order Dismissing Proceedings).

5 See *Carter & Johnson*, supra note 5 at 316-17.

6 See, e.g., *In the Matter of Google, Inc. and David C. Drummond*, Admin. Proc. Rel. No. 33-8523 (January 13, 2005); *SEC v. Craig Scott*, Lit. Release No. 19077 (February 14, 2005); *In the Matter of Phlo Corp., James B. Hovis, and Anne P. Hovis*, Admin. Proc. File No. 3-11909 (April 21, 2005). For a full review of 2005 SEC cases against in-house counsel, see J. Villa, *SEC and Criminal Proceedings Against Inside Corporate Counsel* (Sept. 2005).

7 Remarks of David Kornblau, Chief Litigation Counsel, SEC Division of Enforcement, at the 2005 SEC Speaks Conference, Practicing Law Institute (March 2005).

8 Giovanni P. Prezioso, Remarks Before the Spring Meeting of the Association of General Counsel (Apr. 28, 2005), available at http://www.sec.gov/news/speech/spch042805gpp.htm.

9 Remarks of Chief Counsel Joan McKowan, speaking at the American Bar Association Annual Federal Regulation of Securities Gathering, Sec. Reg. & L. Rep. (BNA) (Dec. 5, 2005).

10 In the Matter of Ira Weiss, Securities Act Release No. 8641, Securities Exchange Act Release No. 52875 (December 2, 2005).

11 Lawyer Liability: Why the SEC Should Clarify Its Recent Ira Weiss Decision, Corporate Accountability Report (BNA) (June 16, 2006).

12 Deputy Director of the SEC's Division of Enforcement, Peter Bresnan, Sec. Reg. & L. Rep. (BNA) (Dec. 19, 2005).

13 Remarks of Linda Thompson, SEC Director of Enforcement, Securities Law Daily, (BNA) (Oct. 5 2006).

14 Remarks of Linda Chatman Thomsen, SEC Director of Enforcement, speaking at the Practicing Law Institute, Corporate Accountability Report (BNA) (Nov. 17, 2006).

15 The SEC's civil injunctive action filed on August 9, 2006 alleged that Sorin, and the other named defendants, engaged in a decade long fraudulent scheme to grant undisclosed, in the money, options to themselves and others by backdating stock options. According to the complaint, Sorin created company records that falsely indicated that a committee of Comverse's board had actually approved the option grant date, when it had not, that Sorin made misrepresentations to Comverse's auditors in order to conceal the backdating scheme, and that Sorin initiated a similar backdating scheme at a majority-owned subsidiary of Comverse.

16 "Comverse's Former Finance Chief Pleads Guilty," Wall Street Journal, Oct 25, 2006, p.C3.

17 "A Second Comverse Ex-Executive Pleads Guilty," Wall Street Journal, Nov. 3, 2006, p.A3.

18 In the Enron civil litigation, another law firm, Kirkland & Ellis, recently agreed to pay $13.5 million to resolve claims against it.

19 "New York City Bar Ass'n Recommends Rule Change to Allow 'Reporting Out'," BNA Securities Regulation & Law, Vol. 38, no. 49 (December 18, 2006).

20 SEC Division of Enforcement Director Stephen Cutler noted that in most cases brought against lawyers by the SEC, the lawyers had "twisted themselves into pretzels to accommodate the wishes of company management, and failed in their responsibility to insist that the company comply with the law" The Themes of Sarbanes-Oxley as Reflected in the Commission' Enforcement Program, Address at the UCLA School of Law, Los Angeles, Cal. (Sept. 20, 2004), available at http://www.sec.gov/news/speech/spch092004smc.htm.

21 Remarks of Giovanni Prezioso, Spring Meeting of the Association of General Counsel (April 28, 2005), located at http://www.sec.gov/news/speech/spch042805gpp.htm.