

Morgan Lewis

Current SEC Enforcement Proceedings and Civil Securities Litigation Against Accountants:
SEC Climate, SEC Valuation Cases, *Tellabs*, *Stoneridge*, Sen. Specter,
and Aiding and Abetting Liability

Summary of Presentation

- Part I: SEC
 - Current Climate and Trends
 - SEC Valuation Cases
- Part II: Civil Securities Litigation
 - Section 10(b) Claims and the PSLRA
 - *Tellabs, Twombly, Central Bank of Denver, and Stoneridge*
 - Analysis of Existing Law and Progeny
 - Sen. Specter's Bill: "Liability for Aiding and Abetting Securities Violations"

Part I: SEC

Current Climate and Trends

Chairman Schapiro (Feb. 2009):

- Abandoned Penalty Pre-Review "Pilot"
- More rapid ("seriatim") consideration of formal orders

Enforcement Director Robert Khuzami (Aug. 2009)

- Delegation to Director of Enforcement of authority to approve formal orders (with subdelegation to "senior officials")
- Abolition of position of "Branch Chief"
- Delegation of routine decisions/fewer tolling agreements
- Creation of five specialized units
- Fostering cooperation by individuals
- More trial attorneys

Bottom Line: Faster Investigations

Current Climate and Trends

- The SEC's authority to discipline accountants and auditors under SEC Rule of Practice 102(e) is alive and well

- Rule 102(e)(1) says:

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter:

- (i) Not to possess the requisite qualifications to represent others;
or

Current Climate and Trends

- (ii) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or
- (iii) To have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.
- (iv) With respect to persons licensed to practice as accountants, “improper professional conduct” under Rule 102(e)(1)(ii) means:
 - (A) Intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards;
 - or (B) Either of the following two types of negligent conduct:

Current Climate and Trends

- (1) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted.
 - (2) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.
- For conduct after July 2002, Section 4C of the Securities Exchange Act contains the same provisions.

Current Climate and Trends

- On July 24, 2009, the U.S. Court of Appeals for the District of Columbia Circuit affirmed an SEC decision sanctioning a Big Four engagement partner for “repeated instances of unreasonable conduct” in connection with the audit of Adelphia
 - Dearlove v. SEC, 573 F.3d 801 (D.C. Cir. 2009)
 - Partner was barred from practice before the SEC with a right to reapply in four years, and ordered to cease and desist from causing reporting violations by public companies

Current Climate and Trends

- The SEC's remedies against accountants and auditors are not limited to disciplinary actions – the SEC can also bring civil enforcement cases seeking injunctions, disgorgement (typically in these cases, of audit fees), and civil money penalties.

SEC Valuation Cases

- Current economic events have turned a bright searchlight on hard-to-value assets
- The SEC is interested in valuation
 - E.G., “Dear CFO” letter sent by OCA last month regarding MD&A on provisions and allowances for loan losses
- In very recent years, the SEC has brought comparatively few valuation cases, although that tendency may be changing
 - See SEC v. Angelo Mozilo, David Sambol, and Eric Sieracki, Litigation Rel. No. 21068A, AAER No. 3023 (June 4, 2009)
 - See SEC v. General Electric Company, Litigation Rel. No. 21166, AAER No. 3029 (Aug. 4, 2009)
- A somewhat longer view of the SEC’s accounting and auditing enforcement releases shows that the SEC has a substantial history of bringing cases against accountants that concern valuation of financial instruments, and also more ordinary assets such as inventory and receivables
 - See cases cited in Appendix
- The SEC can be expected to draw on that history in evaluating accountants’ and auditors’ conduct in more exotic areas, such as accounting for derivatives under FAS 157, that have been in the public eye recently

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Part II: Civil Securities Litigation

Elements of a Section 10(b) Claim

- Misrepresentation or omission of material fact
- In connection with sale of a security
- Scierter -- i.e., intent to deceive investors or reckless disregard for the truth
- Investor reliance on false statements or omissions
- Transaction causation and loss causation
- Damages

1995 Private Securities Litigation Reform Act ("PSLRA")

- Enacted to eliminate frivolous lawsuits.
- Authorized SEC to bring actions against aiders and abettors; private right of action discussed but rejected.
- Allegations of fraud must meet higher pleading standard
 - Facts must show "strong inference" of scienter
 - Particularity as to circumstances

Tellabs, Inc. v. Makor Issues & Rights, Ltd.

551 U.S. 308 (2007)

- First Supreme Court ruling to address standards for pleading scienter (i.e., fraudulent intent) under the PSLRA.
- Reiterated that PSLRA's goal is to limit "abusive" litigation.
- Imposes on plaintiffs the burden of pleading facts supporting fraud that, taken collectively, are "more than merely plausible or reasonable:" they must be "cogent and at least as compelling as any opposing inference of nonfraudulent intent."
- Courts are permitted to consider competing inferences.

Bell Atl. Corp. v. Twombly

550 U.S. 544 (2007)

- Not a PSLRA case (antitrust), but increasingly has application in securities fraud actions.
- Rejects standard that a motion to dismiss should be denied unless there is “no set of facts” that could support claim.
- “Factual allegations must be enough to raise a right to relief above the speculative level.”
- Requires “enough facts to state a claim for relief that is plausible on its face.” If claim is only “conceivable,” it must be dismissed.

Central Bank of Denver v. First Interstate Bank of Denver 511 U.S. 164 (1994)

- No private right of action for "aiding and abetting" a § 10(b) violation.
- Scope of § 10(b) delimited by its own text.
- Plaintiff must allege it relied on defendant's statements or actions.
- Allowing aiding and abetting without a showing that the plaintiff relied on the aider and abettor's statements or actions would circumvent the reliance element.

Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc. 552 U.S. 148 (2008)

- Affirmed Central Bank of Denver.
- Held that scheme liability does not ordinarily extend to parties who make no statements because there can be no reliance.
- There need not be a specific oral or written statement; "conduct itself can be deceptive."
- However, third parties had no duty to disclose conduct.
- Reliance on that conduct not presumed because the "market" did not know.

Scienter

- Most circuits permit pleading of scienter through some combination of motive and opportunity, allegations of actual knowledge of wrongdoing, or allegations of recklessness.
- All theories must be alleged with particularity.

Scienter: Motive and Opportunity

- Opportunity: was there the ability to engage in fraud? Rarely challenged.
- Motive: was there a reason to engage in fraud?
- May not usually be alleged by ordinary compensation or fees.

Scienter: Actual Knowledge; Circumstantial Evidence

- Actual knowledge
 - Often pled through confidential witness allegations.
 - May not usually be pled by reference to defendant's position alone.

Scienter: Recklessness

- Highly unreasonable and extreme departure from standards of ordinary care to the extent that the danger was known or was so obvious accountant must have been aware of it.
- Amounted to no audit at all, egregious refusal to see the obvious or investigate the doubtful, or no reasonable accountant would have made the same accounting judgments.
- Allegations of GAAP or GAAS, alone, are insufficient to plead scienter.

Scienter: Recklessness

- Allegations of problems with internal controls or accounting practices also insufficient.
- Conclusory allegations of red flags are insufficient. Plaintiff must allege the red flags with specificity and how and why the red flags put the accountant on notice.
- In sum: malpractice is not fraud.

Reliance

- Section 10(b) requires plaintiff to establish that it relied upon a misstatement or omission of defendant.
- However, reliance is usually presumed through “fraud-on-the-market” theory.
- Must allege reliance if information not reflected in market.

Progeny

West Virginia Investment Management Board v. Doral Financial Corp., 2009 WL 2779119 (2d Cir. Sept. 3, 2009)
(dismissed)

- Recklessness is conduct that is highly unreasonable and an extreme departure from standards of ordinary care.
- Court may consider inferences that neither party raised.
- Competing inference that accountants were deceived is stronger than inference that they were reckless.

Progeny

Weiss v. Priceline.com, Inc., 2009 WL 1424510 (2d Cir. May 2009) (dismissed)

- Auditors questioned management about the accounting treatment of a warrant. The intent behind warrant affected treatment. Auditors relied upon representations of management concerning that intent.
- The court found that the more cogent, natural inference from the facts was that the auditor acted professionally based on representations of management about intent.
- Additionally, the fact that the accounting treatment of the warrant was discussed in detail in Priceline's financial statements also negated inference of intent.

Progeny

Public Employees' Retirement Assoc., 551 F.3d 305 (4th Cir. Jan. 2009) (leave to amend denied as futile)

- "In order to establish a strong inference of scienter, plaintiffs must do more than merely demonstrate that defendants should or could have done more. They must demonstrate that the [accountants] were either knowingly complicit in the fraud, or so reckless in their duties as to be oblivious to malfeasance that was readily apparent."
- More compelling inference: "the evidence as a whole leads to the strong inference that defendants were deceived by their clients."
- Stoneridge: Plaintiffs must show "that defendants actually made a misrepresentation or omission in their audit opinions on which investors relied; parties who merely assist another in violating § 10(b) are not liable under § 10(b)."
- Because Defendants did not argue lack of reliance, the Fourth Circuit did not decide this issue.

Progeny

Ley v. Visteon Corp., 543 F.3d 801 (6th Cir. 2008) (dismissed)

- Applying Tellabs, the Court held that the nature and magnitude of the accounting errors at issue, including GAAP violations, did not warrant an inference of recklessness.
- To allege that an independent accountant or auditor acted with scienter, the complaint must contain facts showing that the deficiencies in the audit were so severe that they strongly suggest that the auditor must have been aware of the fraud.
- Thus, “the complaint must identify specific, highly suspicious facts and circumstances available to the auditor at the time of the audit and allege that these facts were ignored, either deliberately or recklessly.”
- The accounting errors, though large, were not “so simple, basic, or pervasive in nature” as to have been obvious to the auditors.

Progeny – Claims Dismissed

- Armstrong v. American Pallet Leasing, Inc., 2009 WL 2611540 (N.D. Iowa Aug. 26, 2009).
- Norfolk Retirement System v. Ustian, 2009 WL 2386156 (N.D. Ill. July 28, 2009).
- Edward J. Goodman Life Income Trust v. Jabil Circuit Inc., 2009 WL 179669 (M.D. Fla. Jan. 26, 2009).
- Trinity Bui v. Industrial Enterprises of America, 594 F. Supp. 2d 364 (S.D.N.Y. 2009).
- Batwin v. Occam Networks, Inc., 2008 WL 2676364 (C.D. Cal. July 1, 2008).
- In re Countrywide Fin. Corp. Sec. Litig., 588 F. Supp. 2d 1132 (C.D. Cal. 2008).

Progeny – Claims Dismissed

- Grand Lodge of Pennsylvania v. Peters, 550 F. Supp. 2d 1363 (M.D. Fla. 2008).
- In re Dell Sec. Litig., 591 F. Supp. 2d 877 (W.D. Tex. 2008).
- In re Doral Financial Corp. Securities Litig., 563 F. Supp. 2d 461 (S.D.N.Y. 2008).
- In re Parmalat Sec. Litig., 501 F. Supp. 2d 560 (S.D.N.Y. 2007).

Progeny – Claims Allowed to Proceed

- In re Parmalat Sec. Litig., 598 F. Supp. 2d 569 (S.D.N.Y. Feb. 25, 2009).
- In re Parmalat Sec. Litig., 594 F. Supp. 2d 444 (S.D.N.Y. Jan. 27, 2009).
- In re New Century, 588 F. Supp. 2d 1206 (C.D. Cal. 2008).
- Lopes v. Vieira, 543 F. Supp. 2d 1149 (E.D. Cal. 2008) (only some claims).
- Katz v. Image Innovations Holdings, Inc., 542 F. Supp. 2d 269 (S.D.N.Y. 2008).
- In re IMAX Sec. Litig., 587 F. Supp. 2d 471 (S.D.N.Y. 2007).

What Can Be Drawn From Cases?

- For the most part, courts have displayed vigilance in applying the Tellabs standards when analyzing scienter.
- Courts generally have found that plaintiffs' allegations do not rise to the requisite level of recklessness to establish an accountant's scienter.
- In cases where claims were allowed to proceed, courts have generally pointed to:
 - Allegations supporting a strong inference that there was some additional conduct or involvement by the accountants that was beyond the scope of a normal audit function, e.g., extensively involved in developing a challenged accounting policy.

What Can Be Drawn From Cases?

- Very specific allegations about what the red flags were and why there is a strong inference that they should have led the accountants to investigate further or treat a transaction differently.
- Very specific allegations of differences of opinion within the accounting firm.
- Decisions from the Courts of Appeal and District Courts have not yet fully fleshed out the clear scope Stoneridge as it pertains to accountant liability.

Sen. Specter's Bill - S. 1551

The Bill

- Co-sponsored by Sen. Jack Reed (D-RI) and Sen. Ted Kaufman (D-DE).
- Amends Section 20 of the Exchange Act.
- Main text provides as follows:

“For purposes of any private civil action implied under this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of this title, or of any rule or regulation issued under this title, shall be deemed to be in violation of this title to the same extent as the person to whom such assistance is provided.”
(emphasis added)

The Bill – Specter Introduction

- “My legislation would overturn two errant decisions of the Supreme Court –[*Central Bank of Denver*] and [*Stoneridge*].”
- “The massive frauds involving Enron, Refco, Tyco, Worldcom, and countless other lesser-known companies during the last decade have taught us that a stock issuer's auditors, bankers, business affiliates, and lawyers—sometimes called ‘secondary actors’ – all too often actively participate in and enable the issuer's fraud. ”
- “The immunity from suit that *Central Bank* confers on secondary actors has removed much-needed incentives for them to avoid complicity in and even help prevent securities fraud, and all too often left the victims of fraud uncompensated for their losses.”
- “*Stoneridge* made matters still worse” Foreclosed possibility that secondary actors that engage in fraudulent activities could be liable.

The Bill

- Senate Judiciary Committee - - Subcommittee on Crime and Drugs - - Sept. 17, 2009 Hearing:
 - Sen. Specter – Chair
 - Prof. John Coffee, Robert Giuffra, Prof. Adam Pritchard, Tanya Solov, and Patrick Szymanski
- Private cause of action for aiding and abetting considered in context of PSLRA and shot down.

The End

Thank You

Morgan Lewis

Chris Mixer



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- Christian J. Mixer is a partner in Morgan Lewis's Litigation Practice. Mr. Mixer's practice is concentrated in securities litigation, including SEC, SRO, and state enforcement proceedings and investigations, as well as shareholder class actions.
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- Prior to joining Morgan Lewis, Mr. Mixer was chief litigation counsel for the U.S. Securities and Exchange Commission's Division of Enforcement, with responsibility for supervising the conduct of all of the Commission's contested enforcement cases, both in the federal district courts and in the administrative forum. Before joining the SEC staff, Mr. Mixer served in the Office of Independent Counsel Lawrence E. Walsh during the Iran/Contra investigation.

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- Mr. Garbutt has also handled individual and class action suits in the areas of product liability and environmental contamination, involving fuel, chemicals, manufacturing, asbestos, pharmaceuticals, and computer software. His experience in this area includes the following representations: one of the largest airlines in an action involving remediation of fuel at an international airport; transportation companies and manufacturers in asbestos personal injury suits; a preeminent software manufacturer in a products liability action; and a pharmaceutical company in over 60 product liability actions in state and federal courts.

APPENDIX

Appendix: Prior SEC Valuation Cases

- Valuation of Business Line

- *In the Matter of Raytheon Company, Daniel P. Burnham, and Aldo R. Servello*, Exchange Act Rel. No. 54057, AAER No. 2449 (June 28, 2006) (settled cease and desist proceeding against company Controller/Acting CFO/Deputy CFO)

Appendix: Prior SEC Valuation Cases

- Valuation of Collateral

- *In the Matter of Peter D. Stewart, C.A., John L. Harbor, C.A., and David Chopping, C.A.*, Exchange Act Rel. No. 46157, AAER No. 1587 (July 2, 2002) (settled Rule 102(e) proceeding against company auditors)

Appendix: Prior SEC Valuation Cases

- Valuation of Deferred Tax Asset
- *In the Matter of Douglas R. Bauer*, Exchange Act Rel. No. 54049, AAER No. 2448 (June 27, 2006) (settled cease and desist proceeding against company CFO)
- *In the Matter of Accounting Consultants, Inc., and Carol L. McAtee, CPA*, Exchange Act Rel. No. 54048, AAER 2447 (June 27, 2006) (settled Rule 102(e) proceeding against outside auditor)

Appendix: Prior SEC Valuation Cases

- Valuation of Financial Instruments

- *SEC v. General Electric Company*, Litigation Rel. No. 21166, AAER No. 3029 (Aug. 4, 2009)
- *In the Matter of David Lloyd Pells*, Exchange Act Rel. No. 60238, Investment Company Act Rel. No. 28809, AAER No. 3005 (July 2, 2009)
- *SEC v. Angelo Mozilo, David Sambol, and Eric Sieracki*, Litigation Rel. No. 21068A, AAER No. 3023 (June 4, 2009)
- *In the Matter of Paul Heidbrink, CPA*, Exchange Act Rel. No. 55031, AAER No. 2530 (Dec. 29, 2006) (settled Rule 102(e) proceeding against outside auditor)

Appendix: Prior SEC Valuation Cases

- Valuation of Financial Instruments (cont'd)

- *In the Matter of Whitemark Homes, Inc., Kenneth L. White, Robert B. Early, and Mitchell R. Gordon*, Exchange Act Rel. No. 55030, AAER No. 2529 (Dec. 29, 2006) (settled cease and desist proceeding against successive company CFOs)
- *In the Matter of Lawrence A. Stoler, CPA*, Securities Act Rel. No. 8726, Exchange Act Rel. No. 54246, Investment Advisers Act Rel. No. 2539, AAER No. 2470 (July 31, 2006) (settled Rule 102(e) proceeding against outside auditor)
- *In the Matter of Accounting Consultants, Inc., and Carol L. McAtee, CPA, supra*

Appendix: Prior SEC Valuation Cases

- Valuation of Financial Instruments (cont'd)
- *In the Matter of Unified Fund Services, Inc. and Michael E. Durham*, Exchange Act Rel. No. 53762, Investment Company Act Rel. No. 27312, AAER No. 2426 (May 5, 2006) (settled cease and desist proceeding against Vice President of Fund Accounting)
- *In the Matter of Gilbert Bergsman, CPA, and Lee Levinson, CPA*, Exchange Act Rel. No. 52959, AAER No. 2354 (Dec. 15, 2005) (settled Rule 102(e) proceeding against outside auditors)

Appendix: Prior SEC Valuation Cases

- Valuation of Financial Instruments (cont'd)
- *SEC v. Edward A. Heil and R. Bret Jenkins*, Litigation Rel. No. 19494, AAER No. 2357 (Dec. 15, 2005) (settled civil injunctive action against company CFO)
- *In the Matter of Grant Thornton LLP, Doeren Mayhew & Co., P.C., Peter M. Behrens, CPA, Marvin J. Morris, CPA and Benedict P. Rybicki, CPA*, Exchange Act Rel. No. 50148, AAER No. 2076 (Aug. 5, 2004) (settled Rule 102(e) proceeding against outside auditors)

Appendix: Prior SEC Valuation Cases

- Valuation of Financial Instruments (cont'd)
- *SEC v. Rollin M. Dick and James S. Adams*, Litigation Rel. No. 18621, AAER No. 1975 (March 11, 2004) (civil injunctive action against company CFO and CAO); see also Litigation Rel. No. 19756, AAER No. 2458 (July 7, 2006) (reporting settlements by defendants)
- *In the Matter of Weiser LLP, Victor R. Wahba, CPA and Stuart A. Nussbaum, CPA*, Exchange Act Rel. No. 49082, Investment Advisers Act Rel. No. 2208, AAER No. 1943 (Jan. 15, 2004) (settled Rule 102(e) proceeding against accounting firm hired to perform surprise examinations of hedge fund pursuant to hedge fund's undertakings in a prior SEC settlement)

Appendix: Prior SEC Valuation Cases

- Valuation of Financial Instruments (cont'd)
- *SEC v. Vivendi Universal, S.A., Jean-Marie Messier, and Guillaume Hannezo*, Litigation Rel. No. 18523, AAER No. 1935 (Dec. 24, 2003) (company investment in fund) (settled civil injunctive action against company CFO)
- *In the Matter of Barbara L. Berry, CPA*, Exchange Act Rel. No. 47474, AAER No. 1734 (March 7, 2003) (valuation of notes receivable, among other assets) (settled Rule 102(e) proceeding against company CFO)

Appendix: Prior SEC Valuation Cases

- Valuation of Financial Instruments (cont'd)
- *In the Matter of W. Dale McGhie, CPA*, Exchange Act Rel. No. 47473, AAER No. 1733 (March 7, 2003) (valuation of notes receivable, among other assets) (settled Rule 102(e) proceeding against outside auditor)
- *In the Matter of Kevin R. Andersen, CPA*, Exchange Act Rel. No. 45502, AAER No. 1510 (March 5, 2002) (corporate stock, along with swapped inventory) (settled Rule 102(e) proceeding against outside auditor)

Appendix: Prior SEC Valuation Cases

- Valuation of Financial Instruments (cont'd)
- *In the Matter of Jeffrey M. Yonkers, CPA*, Exchange Act Rel. No. 44606, AAER No. 1428 (July 27, 2001) (options granted to consultant) (settled Rule 102(e) proceeding against outside auditor)
- *In the Matter of Barry C. Scutillo, CPA, Mark F. Jensen, CPA, R. Gordon Jones, CPA, and Mark F. Jensen, CPA*, Exchange Act Rel. No. 44264, AAER No. 1389 (May 4, 2001) (Russian CDs) (settled Rule 102(e) proceeding against outside auditor, Mark F. Jensen)

Appendix: Prior SEC Valuation Cases

- Valuation of Inventory

- *SEC v. VeriFone Holdings, Inc. and Paul Periolat*, Litigation Rel. No. 21194, AAER No. 3044 (Sept. 1, 2009) (settled civil enforcement action against company and former supply chain controller)
- *In the Matter of LSB Industries, Inc. and Jimmie D. Jones, CPA*, Exchange Act Rel. No. 60336, AAER No. 3015 (July 17, 2009) (settled Rule 102(e) proceeding against company and CAO)
- *In the Matter of Warren B. Schmidgall*, Exchange Act Rel. No. 60181, AAER No. 3002 (June 26, 2009) (settled follow-on Rule 102(e) proceeding against company CFO)
- *SEC v. Dawn M. Schlegel and Sandra Hatfield*, Litigation Rel. No. 19806, AAER No. 2475 (Aug. 17, 2006) (civil enforcement action against CFO)

Appendix: Prior SEC Valuation Cases

- Valuation of Inventory (cont'd)
- *In the Matter of Deloitte & Touche LLP, Steven H. Barry, CPA, and Karen T. Baker, CPA*, Exchange Act Rel. No. 51607, AAER No. 2238 (April 26, 2005) (settled Rule 102(e) proceeding against outside auditors)
- *In the Matter of PriceWaterhouseCoopers LLP*, Exchange Act Rel. No. 49678, AAER No. 2008 (May 11, 2004) (settled Rule 102(e) proceeding against outside auditor)

Appendix: Prior SEC Valuation Cases

- Valuation of Inventory (cont'd)
- *In the Matter of PricewaterhouseCoopers LLP*, Exchange Act Rel. No. 47900, AAER No. 1787 (May 22, 2003) and *In the Matter of Philip G. Hirsch, CPA*, Exchange Act Rel. No. 47901, AAER No. 1788 (May 22, 2003) (improper reserve for impairment of inventory) (settled Rule 102(e) proceedings against outside auditor)
- *In the Matter of Glen Andrew Folck*, Securities Act Rel. No. 8196, Exchange Act Rel. No. 47404, AAER No. 1721 (Feb. 26, 2003) (improper reserve for impairment of inventory) (settled cease and desist proceeding against company CFO)

Appendix: Prior SEC Valuation Cases

- Valuation of Inventory
- *In the Matter of Phillip E. Harlow, CPA*, Exchange Act Rel. No. 47261, AAER No. 1706 (Jan. 27, 2003) (settled Rule 102(e) proceeding against outside auditor)
- *In the Matter of Carl M. Apel*, Exchange Act Rel. No. 44136, AAER No. 1379 (March 30, 2001) (settled cease and desist proceeding against company controller and vice president of finance)

Appendix: Prior SEC Valuation Cases

- Valuation of Licenses

- *In the Matter of Russell Ponce*, Exchange Act Rel. No. 43235, AAER No. 1297 (Aug. 31, 2000) (Commission decision in litigated Rule 102(e) proceeding against outside auditor)

- Valuation of Mineral and Timber Properties

- *In the Matter of Harlan & Boettger, LLP, William C. Boettger, CPA and P. Robert Wilkinson, CPA*, Exchange Act Rel. No. 44817, AAER No. 1452 (Sept. 19, 2001) (South American timber properties) (settled Rule 102(e) proceeding against outside auditor)

Appendix: Prior SEC Valuation Cases

- Valuation of Mineral and Timber Properties (Cont'd)
- *In the Matter of Ralph Sanchez, CPA*, Exchange Act Rel. No. 44816, AAER No. 1451 (Sept. 19, 2001) (Brazilian timber property) (settled Rule 102(e) proceeding against outside auditor)
- *In the Matter of R. Gordon Jones, CPA and Mark F. Jensen, CPA*, Exchange Act Rel. No. 44265, AAER No. 1390 (May 4, 2001) (Bolivian mining properties) (settled Rule 102(e) proceeding against outside auditor, R. Gordon Jones)

Appendix: Prior SEC Valuation Cases

- Valuation of Miscellaneous or Unspecified Assets
- *SEC v. Escala Group, Inc., Gregory Manning and Larry Lee Crawford*, Litigation Rel. No. 20965, AAER No. 3031 (March 23, 2009) (collectible stamps)
- *In the Matter of Dennis L. Hynson, CPA*, Exchange Act Rel. No. 57891, AAER No. 2834 (May 30, 2008) (settled cease and desist proceeding against company Vice President of Finance)
- *SEC v. Urs Kamber, Stephan Husi and Richard Jon May*, Litigation Rel. No. 20336, AAER No. 2741 (Oct. 17, 2007) (civil injunctive action against company CFO, Controller, and group Vice President of Finance, tax counsel and treasurer); *see also* Litigation Rel. No. 20605, AAER No. 2835 (May 30, 2008) (announcing settlement as to CFO Kamber); Litigation Rel. No. 20860, AAER No. 2919 (Jan. 21, 2009) (announcing settlement as to Controller Husi)

Appendix: Prior SEC Valuation Cases

- Valuation of Miscellaneous or Unspecified Assets
- *SEC v. Richard D. Power, Edward Federman, and Richard J. "Skip" Heger*, Litigation Rel. No. 19953, AAER No. 2527 (Dec. 21, 2006) (civil injunctive action against company executives); see also Litigation Rel. No. 20096, AAER No. 2603 (April 30, 2007) (announcing settlement by company CFO Federman); Litigation Rel. No. 21128, AAER No. 3009 (July 14, 2009) (announcing settlement by company VP Power)
- *SEC v. David G. Zilli*, Litigation Rel. No. 19455, AAER No. 2342 (Nov. 2, 2005) (settled civil injunctive action against company CFO)

Appendix: Prior SEC Valuation Cases

- Valuation of Miscellaneous or Unspecified Assets (Cont'd)

- *In the Matter of Michael Karlins, CPA*, Exchange Act Rel. No. 49997, AAER No. 2054 (July 9, 2004) (settled Rule 102(e) proceeding against outside auditor)
- *SEC v. Wesley H. Colwell*, Litigation Rel. No. 18403, AAER No. 1894 (Oct. 9, 2003) (settled civil injunctive action against company chief accounting officer)
- *In the Matter of Michael G. Horsey, CPA, Michael D. Watson, CPA, and Sallie D. Feldman, CPA*, Exchange Act Rel. No. 46845, AAER No. 1667 (Nov. 18, 2002) (settled Rule 102(e) proceeding against outside auditors)

Appendix: Prior SEC Valuation Cases

- Valuation of Miscellaneous or Unspecified Assets (Cont'd)
- *In the Matter of PricewaterhouseCoopers LLP, et al.*, Exchange Act Rel. No. 46216, AAER No. 1596 (July 17, 2002) (settled Rule 102(e) proceeding against outside auditor)
- *In the Matter of Arthur Andersen LLP*, Exchange Act Rel. No. 44444, AAER No. 1405 (June 19, 2001) (impairment as one of several issues in settled Rule 102(e) proceeding against Andersen as outside auditor of Waste Management, Inc.)

Appendix: Prior SEC Valuation Cases

- Valuation of Patents

- *In the Matter of Kurt D. Saliger, CPA*, Securities Act Rel. No. 8122, AAER No. 1615 (Aug. 16, 2002) (settled Rule 102(e) proceeding against outside auditor)

- Valuation of Receivables

- *SEC v. Martin G. Fraser, Don W. Watson, Edward W. O'Brien, and Gary M. Opper*, Litigation Rel. No. 20933A, AAER No. 3024 (March 6, 2009) (civil injunctive action against company officers involving former controller); *see also*, *SEC v. Jenkins*, Litigation Rel. No. 21149A, AAER No. 3025 (July 23, 2009) (SOX 304 clawback action against former CEO, who was not charged with any violation)
- *In the Matter of Thomas D. Costello*, Exchange Act Rel. No. 48906, AAER No. 1921 (Dec. 11, 2003) (settled cease and desist proceeding against company controller)

Appendix: Prior SEC Valuation Cases

- Valuation of Miscellaneous or Unspecified Assets (Cont'd)

- *In the Matter of Rita J. McConville and Kevin M. Harris*, Exchange Act Rel. No. 48770, AAER No. 1910 (Nov. 12, 2003) (cease and desist proceeding against successive company CFOs); *see also* I.D. Rel. No. 259 (Sept. 27, 2004) (ALJ initial decision issuing cease and desist order against McConville, but not against Harris); Exchange Act Rel. No. 51950, AAER No. 2271 (June 30, 2005) (Commission decision issuing cease and desist order against McConville)
- *In the Matter of Telxon Corporation, Gary Grand, and James G. Cleveland*, Exchange Act Rel. No. 45507, AAER No. 1511 (March 5, 2002) (settled cease and desist proceeding against company controller, Gary Grand)

Appendix: Prior SEC Valuation Cases

- Valuation of Software

- *In the Matter of Secure Sign, Inc. (Formerly Yourbankonline.com), Pakie V. Plastino, and William L. Butcher, C.P.A.*, Exchange Act Rel. No. 44511, AAER No. 1421 (July 3, 2001) (settled Rule 102(e) proceeding as to outside auditor, William L. Butcher)