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SCHIFFRIN & BARROWAY, LLP
Attorneys at Law

Client Newsletter

Newsletter Highlights

- S&B Settles *AremisSoft Corp.* Case.
- New Attorneys Join S&B.
- State of New Jersey Retains S&B In Tenet Healthcare Case.
- The Sarbanes-Oxley Act And Securities Litigation.
- Institutional Investors Fight Corporate Fraud.
- S&B Recovers 401(K) losses.

Schiffrin & Barroway Achieves Settlement in *AremisSoft Corp.* Case

Schiffrin & Barroway is particularly proud of the results recently achieved before Hon. Joel A. Pisano in *In re AremisSoft Corp. Sec. Litig.*, C.A. No. 01-CV-2486 (D.N.J. 2002). This case was exceedingly complicated as it involved the embezzlement of hundreds of millions of dollars by former officers of the Company who are now fugitives. In settling the action, we assisted in reorganizing the Company to allow for it to continue operations, while successfully separating out the securities fraud claims and the bankrupt Company's claims into a litigation trust. The Settlement, which was recently approved, calls for the class to receive the majority of the equity in the new company, as well as their pro rata share of any amounts recovered by the litigation trust. The Court-appointed co-trustees for the litigation trust, Joseph P. LaSala, Esq. and Fred S. Zeidman, have retained us to continue prosecuting the actions on behalf of the litigation trust. In this capacity, we have filed an action in the Isle of Man and have successfully frozen more than \$175 million of stolen funds and are attempting to recover the stolen funds on behalf of the litigation trust. In addition, we are continuing to litigate the litigation trust's claims against the Company's outside auditors and attorneys.

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New Attorneys Join The Firm

Recently Schiffrin & Barroway added several new attorneys to help with the firms expanding workload. Two partners and six associates have joined the firm and below is a brief profile of their backgrounds. For more information about these and all of Schiffrin & Barroway's attorneys, visit our new website at www.sbclasslaw.com.

Katharine M. Ryan: Katie Ryan, a partner of the firm, was a member of the firm of Savett Frutkin Podell & Ryan, P.C. from its inception in October 1991 through January 2002. Prior to the formation of her firm, from 1984 to 1991, Ms. Ryan was an associate at Kohn, Savett, Klein & Graf, P.C., Philadelphia, Pennsylvania. Ms. Ryan graduated cum laude from Villanova University School of Law in May, 1984. She is a member of the Philadelphia Bar Association.

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New Attorneys Join The Firm *From Page 1*

Jacob A. Goldberg: Prior to joining Schiffrin & Barroway as a partner of the firm, Mr. Goldberg was a member of the firm of Berger & Montague, P.C. Mr. Goldberg is a 1988 graduate of Columbia University (B. A., History) and a 1992 graduate (J. D. cum laude) of the Temple University School of Law. Mr. Goldberg is admitted to practice law in the Commonwealth of Pennsylvania, the Supreme Court of the United States, the United States Court of Appeals for the Third Circuit, and the United States District Courts for the Eastern District of Pennsylvania, the Central District of Illinois and the District of Colorado.

Edward W. Ciolko: An associate of the firm, Mr. Ciolko received his law degree from Georgetown University Law Center in 2001. Additionally, Mr. Ciolko received his Master's degree in Public and Private Management (MPPM/MBA) from Yale School of Management in 1997. He is licensed to practice law in the State of New Jersey.

Sean M. Handler: An associate of the firm, Mr. Handler received his law degree (cum laude) from Temple University School of Law. He is licensed to practice law in Pennsylvania and has been admitted to practice before the Eastern District of Pennsylvania. Mr. Handler previously worked at Reed Smith, LLP and concentrates his practice in securities class actions.

Scott K. Johnson: An associate of the firm, Mr. Johnson received his law degree from University of California, Hastings College of the Law in 1996. He is licensed to practice law in Pennsylvania and California and has been admitted to practice before the United States Court of Appeal for the Ninth Circuit and the United States District Courts of Central, Northern, Eastern California and the Eastern District of Pennsylvania.

Lee Rudy: An associate of the firm, Mr. Rudy received his law degree from Fordham University School of Law. He is licensed to practice law in New York and Pennsylvania and has been admitted to practice before the Eastern District of Pennsylvania. Prior to joining the firm, Mr. Rudy was an Assistant District Attorney in the office of the Manhattan D.A. for six years, where he tried over twenty felony cases to verdict.

Kay Sickles: An associate of the firm, Ms. Sickles received her law degree from the University of Pennsylvania School of Law in 1994. She is licensed to practice law in Pennsylvania and New Jersey has been admitted to practice before the Eastern District of Pennsylvania and the District of New Jersey.

Andrew Zivitz: An associate of the firm, Mr. Zivitz received his law degree from Duke University Law School in 1995. He is licensed to practice law in Pennsylvania and New Jersey and has been admitted to practice before the Courts of the Commonwealth of Pennsylvania and the State of New Jersey, the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey. Mr. Zivitz previously worked at Drinker Biddle & Reath, LLP and concentrates his practice in securities class actions.

Marc D. Weinberg: An associate of the firm, Mr. Weinberg received his law degree from Widener University in 1992 and is a graduate of Pennsylvania State University. He is licensed to practice law in Pennsylvania.

The Effect Of The Sarbanes-Oxley Of 2002 On Securities Litigation

By: David Kessler, Esq. and Darren J. Check, Esq.

A new level of responsibility was imposed on corporate executives and the auditors of public companies with the signing into law of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley" or the "Act") by President Bush on July 30, 2002. Sarbanes-Oxley is the result of a maelstrom of unprecedented, massive accounting frauds allegedly perpetrated by high-profile public companies such as Enron, Worldcom and Global Crossing and their advisors and accountants. The Act was designed to restore investor confidence which has and is continuing to erode due to these frauds. Sarbanes-Oxley, a far ranging piece of legislation that affects various aspects of corporate governance as well as the actions of executives, accountants, analysts and attorneys, also increases the financial reporting responsibilities of public companies and expands their potential liability for defrauding investors. This article will highlight certain aspects of Sarbanes-Oxley that most directly affect securities class-action litigation.

Statute of Limitations

Prior to Sarbanes-Oxley the statute of limitations for bringing a securities fraud action was either one year from the time a litigant first becomes or should have become aware of the alleged violation, but in no event more than three years following the alleged violation. The passage of Sarbanes-Oxley extends the statute of limitations to two years from notice of the alleged violation, but no later than five years following the alleged violation. This extended statute of limitations will now allow investors sufficient time to properly develop allegations of fraud against all potential wrongdoings.

Certification of Financial Reports

Section 906 Certification: Under Section 906 of the Sarbanes-Oxley Act, any periodic report from a public company filed with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act and containing financial statements must be accompanied by a written statement by the CEO and the CFO (or the equivalent officer) certifying that the report fully complies with the reporting requirements of Section 13(a) or 15(d) of the Exchange Act and that it fairly presents the financial results, condition, and operations of the company in all material respects. While we believe that the securities laws as they currently exist already provide for liability for officers or directors who sign materially false or misleading financial reports, the act provides clear support for this interpretation. In addition to supporting civil liability, this provision of the Act allows the government to penalize any officer who provides a certifying statement and its accompanying periodic report knowing that the accompanying report does not comply with the requirements set forth in this section, with a maximum of \$5,000,000 in fines and the potential for serving a maximum of 20 years in prison.

Section 302 Certification: This section requires that each quarterly or annual report filed with the SEC to be accompanied by a written statement of the reporting company's CEO and CFO certifying that:

- * The signing officer has reviewed the report;
 - * Based on the signing officer's knowledge, the report does not contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
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- * Based on the signing officer's knowledge, the financial statements and other financial information included in the periodic report fairly present in all material respects the financial condition and results of operations of the company;
- * The signing officers are responsible for establishing and maintaining internal controls, have designed such internal controls to ensure that they are receiving all material information about the company's operations, have evaluated the effectiveness of such controls as of a date within 90 days prior to the report, and have presented in the report their conclusions about the effectiveness of the internal controls based on their evaluations;
- * The signing officers have disclosed to the company's audit committee and to their auditors all significant deficiencies in the design and operation of the internal controls and any fraud that involves management or other employees who have a significant role in the company's internal controls; and
- * The signing officers have indicated in the report whether or not there were significant changes to the internal controls subsequent to the date of their evaluation that could significantly affect the internal controls, including any corrective actions with regard to significant deficiencies of material weaknesses.

Once again, while we feel that several of the responsibilities set forth above are already embodied within case law interpreting the federal securities laws, this attempt to restore investor confidence will aid investors in bringing actions against CEO's, CFO's, and other officers who certify materially false and misleading financial reports.

Prohibition on Loans

Section 402 of the Act prevents a public company from directly or indirectly making a loan or extending credit to any of its executive officers or directors. While this provision does not affect any loans made before the Act was implemented, no material modification may be made to such loans, nor can they be renewed. Consequently, loans can no longer be made to executives or directors to purchase personal items, for relocation purposes, to allow the purchase of company stock or to pay taxes on grants of restricted stock. These type of loans, which were at the heart of several of the recent corporate scandals that shook the business world over the past few years, are now expressly prohibited by the Act.

Conclusion

While the Act certainly has the potential to protect investors and employees of public companies and might ultimately restore investor confidence in the system, in order for the Act to be truly effective, Courts must allow private litigants to implement congressional intent by sustaining private actions that are based upon the provisions of the Act. As with all legislation, however, it will take some time before a sufficient body of case law develops to provide the securities bar with a fair interpretation of the Act. A full version of the act can be found at:
<http://news.findlaw.com/hdocs/docs/gwbush/sarbanesoxley072302.pdf>.

Schiffirin & Barroway Unveils New Web-Site

Schiffirin & Barroway is pleased to announce the completion of its new web-site. After moving into our new office space, Schiffirin & Barroway set out to redesign its web-site in an effort to provide more information for our clients about our current cases, the firm and its latest developments. The firm's site was redesigned and is now easier to navigate, and provides more information on our current cases, developments in the law, as well as a web-based version of our newsletter that will be updated more frequently than the hard copies which are distributed.

In today's world the web and e-mail have become invaluable tools with which to make others aware of your presence and to communicate with clients. Not to be left behind in the digital revolution, Schiffirin & Barroway is always striving to make our web-site more user-friendly for our clients. Please visit the site at <http://www.sbclasslaw.com> and learn more about, our current cases, the firm and our attorneys.

The New Web-Site Will Provide More Information For Our Clients And Prove Easier To Use And Navigate.

Schiffirin & Barroway Selected By State Of New Jersey To Litigate Securities Class Action Against Tenet Healthcare

The State of New Jersey, a public pension fund which manages over \$70 billion in assets for current and former state employees, recently selected Schiffirin & Barroway to represent the State's interest in the securities class action filed against Tenet Healthcare Corp., *In re: Tenet Healthcare Corp. Sec. Litig.*, Master File No. CV-02-8462-RSWL.

After extensive briefing and argument on hotly contested lead plaintiff issues, the United States District Court for the Central District of California appointed the State of New Jersey as Lead Plaintiff and approved its selection of Schiffirin & Barroway as Co-Lead Counsel to represent the class.

In this action, Tenet and certain of its officers and directors are alleged to have issued false and misleading statements concerning the Company's superior financials, which defendants attributed to state-of-the-art facilities and high-quality patient care. Plaintiffs believe that the Company inflated its financial results by, among other things, upcoding, receiving excessive outlier payments and wrongfully inducing patients into undergoing unnecessary and invasive surgeries.

The litigation of this case is being led by Richard Schiffirin, Jacob Goldberg, and Stuart Berman. We believe that this is a case that will require a great deal of investigatory work, but we are confident that we will be able to achieve a good result on behalf of defrauded investors.

The State of New Jersey Appointed As Lead Plaintiff In Class Action Against Tenet Healthcare Corp.

Institutional Investors Have Weapon Against Corporate Fraud

By: Marc D. Weinberg, Esq.

In 1995, Congress completely overhauled the rules governing securities class actions through the passage of the Private Securities Litigation Reform Act (the "PSLRA"). While Congress did not draft the PSLRA with the sole objective of protecting defrauded shareholders, one of the more neutral provisions of the law changed the rules for control of these cases. That change expressed a clear preference that institutional investors serve as the controlling party in securities cases and created an atmosphere in which the protection of shareholders' rights has since thrived.

The "lead plaintiff" provision of the PSLRA creates a presumption that the investor or group of investors with the largest loss, not the lawyer who filed the first case, controls a securities class action. Congress intended to increase the likelihood that institutional investors would step forward as lead plaintiffs in securities class actions to the ultimate benefit of all defrauded shareholders. As America's largest shareholders with approximately \$9.5 trillion in the equities markets, institutional investors ultimately have the greatest stake in the outcome of any securities lawsuit. Moreover, institutional investors are uniquely qualified to lead such litigation and have the desired experience to work with class counsel to obtain the best possible results. In addition, an institutional investor with a large loss will certainly represent the interests of all aggrieved shareholders more effectively than a class member with a smaller amount at stake.

In the years immediately following the passage of the PSLRA, few institutional investors seized the opportunity to serve as lead plaintiff. However, in recent years, the potential benefits have become more obvious and both union pension funds and public pension funds have come forward in significant numbers. This trend, along with other factors, has had a significant impact on securities class action litigation as the size of recoveries appears to be skyrocketing. The average post-PSLRA settlement is now \$17.5 million compared to only \$5 million before the PSLRA. Most notably, there have been an extraordinary number of settlements surpassing \$100 million.

Moreover, given the enormity of the fraud alleged in many recent class actions against companies such as Tyco, Tenet Healthcare and Enron and the leadership roles garnered by institutional investors in these cases, there are certain to be additional, monumental recoveries in the coming months and years.

In spite of the obvious benefit of the lead plaintiff provision, it is critical to recall that the PSLRA as a whole essentially presented corporate America carte blanche to defraud investors. A telling statistic is the dramatic increase in financial restatements of earnings by public companies following its passage. Between 1990 and 1997, the average number of financial restatements of public companies was forty-nine (49) per year. The number of restatements increased to one hundred (100) in 1998; two hundred seven (207) in 1999; one hundred fifty-seven (157) in 2000; two hundred seventy (270) in 2001; and **three hundred thirty (330)** in 2002. The numbers are staggering and the impact on the economy, particularly on union pension funds and public pension funds, has been catastrophic.

Those numbers merely serve to illustrate the importance of the lead plaintiff provision. It is imperative that institutions use the weapon the PSLRA provided shareholders to be pro-active and flex their financial muscle. Fund beneficiaries have watched the parade of corporate insiders siphon their hard earned money from public funds to sate their own greed and malfeasance. Institutional investors

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must take a stand and send the clear message to corporate wrongdoers and all of corporate America that enough is enough. Institutional investors are owners of these companies and will not tolerate the lies and deceit. Union pension funds and public pension funds must demand remuneration of the money taken through fraud and insist upon changes in corporate governance so that their investments will bear fruit and the company will perform in a responsible, profitable manner.

Authentic corporate accountability and significant reform can be achieved. Schiffrin & Barroway takes pride in assisting defrauded investors in obtaining significant recoveries in securities fraud class actions and we are devoted to making meaningful changes in corporate governance. We will assist institutional investors without charge by monitoring a union or public fund's equity portfolio to determine if the fund holds shares in any companies accused of violations of federal and/or state securities laws. We will then advise the fund about the best course of action to recover any loss and to make a significant impact on the litigation and the company.

Schiffrin & Barroway Helps Employees Recover 401(k) Losses

By: Joseph H. Meltzer, Esq.

Employers are always looking to instill confidence in their workforce, and employees want to believe they are working for a successful, stable company. But this combination can have devastating consequences, particularly where self-aggrandizing statements -- normally reserved for the investing public -- are directed inward. In theory, there is nothing wrong with employers encouraging employees to "take a stake" in their company's future. These pep talks, however, should be tempered by the principles of prudent investing.

According to a recent study of 295 company-sponsored Defined Contribution Plans, at least 34 have 50% or more of Plan assets in company stock; and another 12 have at least 75% of Plan assets directed to company stock. Such a high concentration of assets in a single equity is, of course, inherently risky. Moreover, this investment pattern clearly runs afoul of the fiduciary duties imposed by the Employee Retirement Income Security Act of 1974 ("ERISA"), particularly where Plan fiduciaries have knowledge of the risks attendant to investing in a company's stock.

Duties of Loyalty and Care

ERISA defines as a fiduciary anyone who (i) "exercises any discretionary authority or discretionary control respecting" management or disposition of a Plan's assets, or (ii) has "discretionary authority with respect to the administration of a Plan." Persons who qualify as fiduciaries are subject to stringent duties in managing and administering these Plans, which include 401(k) retirement savings plans. Specifically, section 404 of ERISA requires that a fiduciary "discharge his duties ... solely in the interest of [plan] participants and beneficiaries" and "with the care, skill, prudence and diligence ... that a prudent man acting in a like capacity and familiar with such matters would use."

These fiduciary obligations, commonly referred to as the "duty of loyalty" and "duty of care," require, among other things, that a company sponsoring a 401(k) Plan as a benefit for its employees

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manage the plan with an “eye single to the interests of the participants and beneficiaries.” As the Department of Labor recently opined:

ERISA’s fiduciary obligations are among the ‘highest known to law.’ They do not permit fiduciaries to ignore grave risks to plan assets, stand idly by while participants’ retirement security is destroyed, and then blithely assert that they had no responsibility for the resulting harm.

Plan Fiduciaries Subject to Liability

Traditionally, Plan fiduciaries have used section 404 as a shield, claiming that where participants direct their investments, ERISA does not require that fiduciaries take proactive measures to discourage imprudent investments in company stock, even where the fiduciaries knew or should have known that such investments carried undue risk. Not surprisingly, the results of this type of “404 insulation” have been disastrous. Companies have been free to direct (and even encourage) employees’ investments to their stock with no fear of accountability, and employees have sustained devastating losses when the value of their company’s stock has plummeted.

The recent wave of corporate malfeasance, however, has forced courts to reexamine the breadth of immunity provided to fiduciaries. Lawsuits filed on behalf of employees who have lost most or all of their retirement savings are calling into question the propriety of allowing a company to simply disavow responsibility for losses sustained by its workforce. These lawsuits also have brought to light the incestuous makeup of some employee benefit plans, where “Benefits Committees” -- ostensibly appointed to oversee management of Plan assets -- are, in truth, simply comprised of company-appointed employees who report directly to upper-level management and lack the autonomy needed to provide meaningful guidance.

Schiffirin & Barroway is at the forefront of this type of litigation. For example, the firm has been appointed by the Court to serve as Co-Lead Counsel on behalf of employees of Global Crossing, who sustained hundreds of millions of dollars in losses to their retirement accounts when the company filed for bankruptcy in January 2002. The firm is committed to working closely with employees and their union representatives to maximize employee recovery in breach of fiduciary lawsuits brought pursuant to ERISA, and to prevent future losses caused by Plans that lack truly independent fiduciaries.

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