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BULLETIN

A QUARTERLY NEWSLETTER FOR INSTITUTIONAL INVESTORS BY SCHIFFRIN & BARROWAY, LLP

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- Court Denies Motion to Dismiss Amended Complaint in Tenet Case
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- Foreign Institutional Investors Coming Forward as Lead Plaintiffs
- Investors Fail to File Claims $1.8 Billion Left on the Table

COURT SUSTAINS AMENDED COMPLAINT IN TYCO CASE

By Michael Yarnoff, Esquire

History of the Action

Schiffrin and Barroway, LLP is co-lead counsel in one of the largest cases alleging securities fraud in history. On January 28, 2003, the plaintiffs filed their consolidated securities class action complaint ("Complaint") against defendants Tyco International, Ltd. ("Tyco"), and certain of its former officers and directors, as well as PricewaterhouseCoopers LLP, Tyco's former outside auditors.

The Complaint alleged that the defendants committed fraud by falsely reporting billions of dollars in revenues and overstating the Company's assets by $4.5 billion. The Complaint alleged

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that these material misrepresentations and omissions in the Company's financial statements were made as the Individual Defendants failed to disclose that they were running Tyco as a criminal enterprise, reaping more than $600 million in personal profits. In addition, it was alleged that Tyco falsely reported its finances in numerous material respects.

Following the filing of the Complaint, the defendants moved for a dismissal and, after months of briefing a variety of issues on the motions to dismiss, the New Hampshire District Court held oral argument on April 2, 2004.

Judge Barbadoro's Ruling

Just recently, on October 14, 2004, in a 56-page opinion, Judge Barbadoro upheld plaintiffs' claims under Sections 10 and 20 of the Securities Exchange Act and Sections 11, 12 and 15 of the Securities Act against Tyco and PricewaterhouseCoopers, and all but one of the former officers and directors named as defendants. The Court found that plaintiffs had adequately alleged that the "accounting fraud scheme benefitted Tyco by allowing it to generate cash through stock sales and borrowing to fund its acquisition strategy, and the looting furthered the fraud scheme by giving the Individual Defendants a financial incentive to implement the scheme."

The Court also held that PricewaterhouseCoopers' scienter was adequately pled by plaintiffs because the Complaint detailed that the auditors had motive and opportunity to engage in the fraud and the accounting problems at Tyco should have been readily apparent to them. Further, the Court found plaintiffs' allegations of loss causation to be sufficient in that Tyco's share price fell because investors lost faith in Tyco's denials of accounting misconduct.

The action is now proceeding into the formal discovery phase.

VIVENDI DECISION VICTORY FOR FOREIGN PLAINTIFFS

By Darren J. Check, Esquire

With the number of securities class actions against foreign-based defendants on the rise, the question of subject matter jurisdiction is a growing issue. Companies such as Parmalat, Royal Dutch Shell, and Adecco, to name a few, have been named defendants in recent actions in U.S. courts. While certain of these companies have securities of some form that trade on a U.S. exchange, oftentimes the majority, if not all, of their securities trade on a foreign exchange. These companies are now contending that U.S. courts do not have the authority to adjudicate alleged fraudulent activity that took place in the United States under such circumstances. For example, in the Parmalat case, nearly all of the company's securities traded on European exchanges, while only a small number of ADRs traded on U.S. exchanges. While it is clear that the majority of the damages in this action were suffered by foreign investors who invested on foreign exchanges, the action was brought in New York based upon the theory that a domestic subsidiary is alleged to being intimately involved in devising the fraud. While the questions of subject matter jurisdiction have yet to be fully addressed, Judge Lewis Kaplan made it clear in statements made during the lead plaintiff hearing that the involvement of certain entities in the United States would mean that it was an issue that would require closer examination.

This very issue was recently addressed by Judge Richard Holwell of the Southern District of New

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York, who ruled that subject matter jurisdiction existed over a class action suit in which foreign plaintiffs accused France's Vivendi Universal of violating U.S. securities law (*In re Vivendi Universal, S.A. Securities Litigation*, 02 civ. 5571). The suit contends that Vivendi (a French-based media conglomerate), CEO Jean-Marie Messier, and former CFO Guillaume Hennezo, concealed the company's growing debt from investors and produced false financial statements.

While the defendants argued that the allegedly false press releases were prepared by non-U.S. officials and distributed by foreign offices of Vivendi, the Court was not convinced. Judge Holwell concluded that a court has subject matter jurisdiction of securities claims brought by foreign purchasers on foreign markets if "there was conduct in the United States that directly caused the foreigners' losses and . . . such conduct was more than 'merely preparatory' to a securities fraud conducted elsewhere."

While it must be noted that decisions on subject matter jurisdiction will be made on a case by case basis, and that the analysis of the conduct that took place in the United States will be subject to intense scrutiny by judges, this is a significant victory for foreign plaintiffs as it signals support for foreign investors bringing suit in U.S. courts under appropriate circumstances.

MOTION TO DISMISS DENIED IN TENET HEALTHCARE CORPORATION CLASS ACTION

By Gregory M. Castaldo, Esquire

On behalf of the State of New Jersey and its Division of Investment, Schiffrin & Barroway, LLP serves as co-lead counsel in the action styled In re Tenet Healthcare Corp. securities Litigation, pending in the Central District of California. The action has been brought on behalf of a proposed class of all purchasers of Tenet securities from January 11, 2000 through November 7, 2002 (the "Class Period"), against Tenet and current or former executive officers, Jeffrey C. Barbakow, David L. Dennis, Thomas B. Mackey, Raymond L. Mathiasen, Barry P. Schochet, and Christi R. Sulzbach, alleging violations of Sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934, and violations of Sections 11 and 15 of the Securities Act of 1933.

Tenet, through its subsidiaries, owns and operates general hospitals and general healthcare facilities throughout the United States. Plaintiffs allege that defendants made materially false and misleading statements and omissions concerning Tenet's business model and financial health throughout the Class Period. Among other things, plaintiffs allege that Tenet failed to disclose that its purported revenue growth was solely driven by undeserved "outlier" payments fraudulently obtained from Medicare. Specifically, the Complaint contends that defendants were "gaming" Medicare, systematically raising their hospitals' charges, wholly unrelated to any increase in hospital costs. As a result, Tenet received hundreds of millions of dollars in reimbursement payments from the government that were neither deserved nor sustainable, thereby artificially inflating Tenet's financial results throughout the Class Period. It is further alleged that defendants failed to disclose that Redding Medical Center, one of Tenet's hospitals, was performing thousands of unnecessary cardiac procedures on healthy patients, solely to increase Tenet's revenues.

During the Class Period, defendants falsely attributed Tenet's glowing financial results to overall cost

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savings and efficiencies. Indeed, on numerous occasions, defendants even downplayed the importance of outlier payments to Tenet's bottom line. In addition to propping up Tenet's apparent financial health, the fraud allowed defendants Barbakow and Mackey to unload approximately 3,750,000 shares of Tenet common stock at artificially inflated prices, netting over $130 million in illegal insider trading proceeds.

Defendants' scheme came to a crashing halt in November 2002. First, securities analyst Kenneth Weakley issued a report downgrading Tenet stock and revealing that Tenet expected to receive nearly 5 times the amount of outliers to which it was entitled and, thus, Tenet's financial results and projections were artificially inflated and unsustainable. Shortly thereafter, on October 30, 2002, agents from several federal agencies raided Redding Medical Center, seeking evidence related to the performance of unnecessary cardiac procedures on otherwise healthy patients solely to reap higher profits.

On November 6, 2002, Tenet issued a press release stating that the federal government intended to audit outlier payments to Tenet hospitals. The next day, Tenet announced that defendants Mackey and Dennis, had been terminated. In response to these shocking revelations, Tenet's common stock price dropped 70% in just 10 trading days, wiping out approximately $17 billion in market capitalization.

Finally, on December 3, 2002, the Company stated that it had abandoned its Medicare charging scheme and was refocusing on "actual pricing." The Company's new CFO acknowledged that the improper outlier payments had materially affected Tenet's financial results. On January 6, 2003, Tenet issued a press release stating that it would voluntarily adopt a proposed federal regulation ensuring the proper assessment and entitlement to outlier payments. As a result, Tenet estimated that its outlier payments would "drop from approximately $65 million per month to approximately $8 million per month," a loss of $684 million annually.

Defendants moved to dismiss the Complaint and the Court heard oral argument on defendants' motions on May 24, 2004. At the hearing, the Honorable Ronald Lew issued an oral opinion, sustaining all of the claims set forth in the Complaint against all defendants. Judge Lew specifically found that the Complaint describes defendants' fraud in ample detail, and pleads that all defendants issued the fraudulent statements knowingly or with deliberate recklessness — two crucial requirements of the Private Securities Litigation Reform Act. Judge Lew ordered the parties to meet and confer concerning a discovery schedule. Pursuant to the Court's order, the parties have exchanged initial disclosures and fact discovery has begun.

INTERPUBLIC GROUP OF COMPANIES, INC. SETTLEMENT VALUED AT OVER $96 MILLION GETS FINAL APPROVAL

By Katharine M. Ryan, Esquire

Schiffrin & Barroway, LLP is pleased to report that on November 4, 2004, the Honorable Denise Cole of the Southern District of New York granted final approval of a securities class action settlement between a certified class of investors and The Interpublic Group of Companies ("IPG") and several of its officers and directors. The settlement consisted of $20,000,000 in cash and 6,551,725 shares of IPG common stock. At the time of the final approval hearing, the total value of the settlement was $96,851,734, which was calculated using the average price of the stock over the ten trad-

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ing days preceding the Final Settlement Hearing. The Settlement also included downside protection to the class because had the value of the Gross Settlement Fund fallen below $77,000,000, then IPG, at its own election, would have needed to issue additional IPG shares of common stock or pay additional cash so that the Gross Settlement Fund had a value of $77,000,000. In granting its approval, the Court praised Schiffrin & Barroway's professionalism, competence and contribution in achieving such a favorable result in such an efficient manner.

Schiffrin & Barroway represented lead plaintiff Private Asset Management, and acted as sole lead counsel in this action. Plaintiff alleged that defendants overstated IPG's earnings and understated its expenses due to its failure to reconcile properly expenses that were incurred for work performed by more than one IPG office on the same account or on the same project for the years 1997 – 2002. These failures were alleged to have occurred principally at IPG's subsidiary, McCann-Erickson.

What began as an announced restatement of $68.5 million on August 13, 2002 was increased in an announcement on October 16, 2002, the last day of the Class Period, to $120 million. After the close of the Class Period, on November 13, 2002, the restatement was revised upwards to $181.3 million. The securities class action was filed on behalf of persons or entities who purchased or acquired IPG common stock between October 28, 1997 and October 16, 2002, or acquired shares of IPG common stock in exchange for shares of True North Communications common stock pursuant to IPG's Form S-4 registration statement filed on April 19, 2001 and amended on May 9, 2001.

COURT PERMITS IPO SECURITIES LITIGATION FOCUS CASES TO PROCEED AS CLASS ACTIONS

By John A. Kehoe, Esquire, David Kessler, Esquire & Ian Berg, Esquire

On October 13, 2004, the IPO Securities Litigation moved into a new phase when Southern District of New York Judge Shira A. Scheindlin granted class certification in six focus cases — VA Linux Corp, Sycamore Networks Inc., iXL Enterprises Inc., Firepond Inc., Engage Technologies Inc., and Corvis Inc. The six focus cases were selected by the parties to be used as test cases to determine whether the suits can proceed as class actions pursuant to Rule 23 of the Federal Rules of Civil Procedure.

By way of background, the IPO Securities Litigation involves claims filed in connection with 310 initial public offerings that occurred between 1998 and 2000. In particular, the complaints allege that 55 underwriters, 309 issuers and hundreds of individuals associated with the issuers engaged in a sophisticated scheme to defraud the investing public by requiring or inducing IPO allocants to order or purchase additional shares in the aftermarket, sometimes at escalating prices, thereby creating an artificial demand and price for those securities. In addition, the complaints allege that certain of the IPO allocants paid undisclosed compensation to the underwriters in return for the IPO allocations and that the underwriters prepared analyst reports that hyped the stock through inaccurate price targets and recommendations because the analysts operated under a conflict of interest. The complaints were consolidated before Judge Scheindlin for pretrial purposes.

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On September 2, 2003, plaintiffs moved for class certification in the six focus cases. Defendants opposed the motion and submitted thousands of pages of briefs, affidavits, exhibits and reports which argued that individual issues unique to various class members predominated over common issues and thus, class certification should be denied because it would be impossible to ascertain which investors should be in the class and which must be excluded. Specifically, defendants argued that each member of the proposed class had different knowledge of the alleged scheme when they invested (e.g., whether the investor was an allocant or an aftermarket purchaser and whether and to what extent the investor was exposed to press reports and other public disclosures), that there were differences in the nature of their investments (e.g., long-term investor, short seller, day trader, momentum trader), the timing of the investment (e.g., amount of artificial inflation at the time of purchase), the amount of damages (e.g., the subsequent dissipation of any artificial inflation by the time of sale) and the traceability of shares to a particular prospectus and registration statement.

Judge Scheindlin rejected each of these arguments. Judge Scheindlin wrote that "[i]n their zeal to defeat the motion for class certification, defendants have launched such a broad attack that accepting their arguments would sound the death knell of securities class actions." She noted that the class action device is "particularly well-suited to securities fraud cases" and that the class action device is an appealing tool for adjudicating cases of fraud perpetrated on numerous persons by the use of similar misrepresentations.

Judge Scheindlin observed that in the defendants' effort to oppose class certification, the defendants do not seek truly separate adjudications of each individual claim. "In reality, they seek no adjudication because the prospect of 310 million individual lawsuits (based on a hypothetical average class membership of one million investors) represents an impossible burden for all parties." Judge Scheindlin added that "if certification is denied, defendants will have essentially defeated the claims without ever having been compelled to defend the suits on the merits." Finally, she observed that:

Although defendants' arguments have raised a number of thorny problems, forcing this Court to take a hard look at the pleadings and the many submissions made in support of and in opposition to this motion, the balance tips strongly in favor of certification. Trying these cases will be an arduous task, but that is no reason to close the courthouse door to the alleged victims of a sophisticated and widespread fraudulent scheme.

In granting class certification in the six focus cases, Judge Scheindlin indicated that most of the issues the opinion addressed would undoubtedly be raised in a motion for class certification with respect to the remaining four consolidated actions. In the 148-page opinion, she cautioned that "[t]his Opinion is intended to provide strong guidance, if not dispositive effect to all parties when considering class certification in the remaining actions."

A copy of the Opinion and Order can be obtained through the IPO Securities Litigation website at:

www.iposecuritieslitigation.com
http://www.iposecuritieslitigation.com.

The underwriter defendants have moved to appeal the Court's decision granting certification.

INSIDER TRADING CLAIMS HELD VIABLE WHERE UNDERLYING 10(b) CLAIM IS TIME-BARRED IN TRACINDA ACTION

by: Richard A. Maniskas, Esquire and Christopher L. Nelson, Esquire

Judge Florence-Marie Cooper upheld plaintiffs' claims brought for insider trading under Section 20A of the Securities Exchange Act against James Aljian ("Aljian"), Kirk Kerkorian ("Kerkorian") and Tracinda Corporation ("Tracinda" or the "Company"). Plaintiffs are represented by Schiffrin & Barroway, LLP. In brief, it was alleged that defendants sold more than 7 million shares of DaimlerChrysler ("DCX") stock while in possession of material, nonpublic information concerning cash flow problems at DCX.

It was argued that between March 19, 1999 and June 11, 1999, defendants sold 7,642,241 shares of Tracinda's DCX holdings for proceeds of more than $661 million. It was further alleged that these trades were conducted while defendants knowingly possessed material, nonpublic information that led to the sale of these holdings. More specifically, Aljian, a member of the DCX's Supervisory Board (the "Board"), is alleged to have attended a Board meeting in Stuttgart, Germany on February 24, 1999 (the "February 24 Meeting") where members of the Board, including defendant Aljian, were given a report marked "strictly confidential"and entitled "DaimlerChrysler Operative Planning 1999–2001" (the "Board Report"). The Board Report contained material, nonpublic information wherein DCX projected a "significant" free cash flow decline before net new business of 2.520 billion euros ($2.69 billion) for 1999 and an overall "significant" free cash flow decline of 1.510 billion euros ($1.69 billion).

After attending the February 24 Meeting, Aljian is alleged to have returned to the offices of Tracinda and placed the Board Report into Tracinda's central files — and thereafter is alleged to have held several discussions with Kerkorian regarding whether to sell Tracinda's DCX holdings. Upon conclusion of the meetings, it is alleged that defendants began selling millions of shares of DCX.

In considering the complaint, the Court was faced with the novel question of whether a timely Section 20A claim survives when its predicate claim, here a violation of Section 10(b), is barred by its own, separate statute of limitations. After a lengthy analysis, the Court held that plaintiff's Section 20A claims were not time-barred, and that plaintiff could proceed.

The Court held that claims brought under Section 20A are derivative in nature and require proof of a separate underlying violation (a "predicate violation") of the Exchange Act. As such, the Court noted that "Plaintiff must plead and prove the predicate claim in order to prevail on his [Section] 20A claim, but that longer limitations period of [Section] 20A permits him to attempt to do so" notwithstanding the dismissal of the predicate violation as time-barred. The Court found that plaintiff had adequately alleged that defendants had traded shares of DCX while in possession of material, non-public information. The Court noted that the elements for an insider trading claim are (1) intentional (2) misrepresentation or failure to disclose (3) a material fact (4) in connection with the purchase or sale of securities. The Court also noted that these elements require that the insider have knowledge of material information and intentionally trade on that information without disclosing it to the public. The Court found that defendants had acted with requisite intent (i.e., scienter) in trading DCX stock. The Court held that a strong inference of scienter was shown while in knowing possession of material, non-public information (i.e., the Board Report) concerning the DCX's decline in free cash flow. The Court further held that the Board Report contained material information which, if known to the reasonable investor, would have been considered an important fact in making their investment decision.

Indeed, this decision is of particular importance to investors as it represents an unprecedented victory with respect to the rights of shareholders to pursue private recompense for insider trading violations. Prior to this case, no plaintiff that we are aware of had

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successfully asserted claims for insider trading beyond Section 10(b)'s then-current three year statute of limitations. By successfully fighting for the ability to pursue insider trading claims for the full five years set forth in Section 20A, Schiffrin & Barroway has substantially expanded shareholders' rights.

Defendants are pursuing interlocutory review of the holding by the Ninth Circuit.

FOREIGN INSTITUTIONAL INVESTORS COMING FORWARD AS LEAD PLAINTIFFS IN GROWING NUMBERS OF U.S. CLASS ACTIONS

By Darren J. Check, Esquire

In a global economy where institutional investors have large sums of money invested in markets around the world, assets must be protected utilizing various methods, depending on their location. Institutional investors have an obligation to their clients to take the necessary steps required to recover the highest percentage of monies lost as a result of corporate malfeasance. However, despite the excellent results achieved through securities class actions, institutional investors based outside the United States historically have avoided taking part in such actions brought in United States courts. The two most common reasons for such inaction are that many of these institutional investors are not aware that they may assert claims in the United States, and that they are not aware of the benefits of taking a leadership position in these cases.

Despite the fact that many foreign institutional investors lose many millions of dollars as a result of corporate fraud, frequently these investors are not aware that they may pursue claims based on these losses. In fact, some foreign institutions are not even aware that certain actions were filed until after the deadline for filing a lead plaintiff application has passed, or even after an action has been resolved. Similarly, foreign institutions often fail to take part in recovering some or all of their financial losses when a lawsuit settles or a judgment is reached, as a result of the proper claim form not being submitted in a timely fashion.

Recently, however, courts in the United States have appointed foreign institutional investors as lead plaintiffs in class actions on behalf of both United States and foreign investors. Indeed, in the class action pending in New York against Parmalat, In re Parmalat Securities Litigation, No. 04 Civ. 0030 (LAK) (S.D.N.Y.), Judge Lewis Kaplan appointed a group of four European institutional investors as lead plaintiffs on behalf of all investors. Furthermore, European and Canadian institutional investors are serving as lead plaintiffs in such important cases as Global Crossing II; In re Goodyear Tire & Rubber Company Securities Litigation, No. 5:03CV2166 (N.D. Ohio); In re Nortel Networks Corporation Securities Litigation, No. 04 Civ. 2115 (GBD) (S.D.N.Y.); In re Levi Strauss & Co. Securities Litigation, No. C-03-3605-RMW (HRL) (N.D. Cal.); and Curtis v. BEA Systems, Inc., et al., No. C-04-2275-SI (N.D. Cal.). In each of these cases, the lead plaintiffs lost a significant amount of money and chose to make their best efforts to recover as much of that money as possible for the benefit of their clients.

It is clear that institutional investors are beginning to understand the advantages of taking an active role in class action cases and engaging a firm to monitor their portfolios so that they are aware of, and capable of, managing all legal claims. In addition to fulfilling their respective fiduciary obligations, many institutional investors are determined to take an active approach to recovering assets lost to fraud. As Dr. Rolf Majcen, head of the legal department at Erste-Sparinvest Kapitalanlagegesellschaft G.m.b.H. in Vienna stated, "[t]his is a tool we can use to demonstrate to our clients, Sparinvest's commitment to recover market

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losses in all venues. This is an area of great concern to many clients." Despite their motivation, it is clear that institutional investors around the world must pay close attention to securities class action litigation in the United States as it relates to their investments.

Schiffrin & Barroway, LLP has extensive experience working with all types of investors, including institutions located outside the United States, such as in Europe, Asia, Canada and South America. The firm offers the same professional services to all of its institutional clients, regardless of their geographic location. In addition, our website is now available in seventeen different languages so that our clients around the world can easily access information about the firm and the cases we are litigating. For more information on the services we offer to institutional investors located outside the United States, please contact Darren J. Check, Esq. at (610) 822-2235 or via e-mail at dcheck@sbclasslaw.com.

$1.8 BILLION LEFT ON THE TABLE IN 2003 AS INSTITUTIONAL INVESTORS FAIL TO FILE CLAIMS: S&B OFFERS HELP

By Marc D. Weinberg, Esquire

$1.8 Billion. That is the amount of money purportedly left on the table by institutional investors that did not file claims in class action settlements in 2003 (see: *Investors Fail to Claim $1.8 Billion from Shareholder Lawsuits* by Mark Jaffee — Bloomberg News L.P., December 2003). A staggering number to say the least. Why is it that so many institutions fail to take part in settlements where they are entitled to a return on prior losses? While there is no empirical data to date, anecdotal evidence suggests that much of the perceived apathy can be attributed to a manpower problem within funds, lack of knowledge by money managers, or both.

Clearly, most institutional investors do not have resources dedicated to filling out claim forms needed to recover. However, with the number and size of settlements on the rise, the aggregated total of these returns can add up to a significant amount of money and in reality, it is a fiduciary obligation of institutions to take the necessary steps to file these claims.

Part of the problem may be that claim forms are often sent to the money manager who purchased the stock on behalf of the fund, rather than the fund itself. It is not uncommon for the claim form to be opened by someone who does not recognize its importance and just throws it away. Whatever the reason, the result is the same — a missed opportunity to collect what could be a considerable sum of cash, stock, or both, for a relatively small amount of work. It is clear that institutional investors are missing out on potentially hundreds of thousands of dollars in recoveries each year.

While some custodial banks do offer programs whereby they assist with or actually process class action claim forms for institutional investors, these are generally services that are offered for a fee, the structure of which varies from program to program. Many funds are wary of spending money for returns that are uncertain and it is not uncommon for the former custodian of a fund to charge exorbitant prices to retrieve transactional information necessary to file a claim form from their archives. Moreover, anecdotal evidence again suggests that even when a fund subscribes to such a service or the custodian indicates they are filing claim forms on behalf of a fund as part of their services, performance audits and routine checks have revealed that banks regularly miss up to sixty percent of all potential claims.

However, through Schiffrin & Barroway's monitoring service, we assist our institutional clients not only with identifying when lawsuits have been filed and what their potential losses and claims are, but we also track each case through the course of the litigation, whether

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we are actively involved in the prosecution of the action or not. This allows us to alert our clients when a case has either been settled or a judgment has been entered and ensure that they timely receive and assist them, if necessary, with the filing of their claims. This service is offered at no charge to our monitoring clients. We firmly believe that we must offer our clients a comprehensive plan for dealing with class action claims both on the front end of these cases, as well as on the back end when the case is completed. Our intention is to have an ongoing relationship with our clients and not only be communicating to them when it comes to cases where we wish for them to serve as a lead plaintiff. As a result, S&B's institutional clients are better positioned to protect investments and to maximize recoveries regardless of being a lead plaintiff or absent class member.

$79 MILLION SETTLEMENT ACHIEVED IN IN RE GLOBAL CROSSING ERISA LITIGATION

By Joseph H. Meltzer, Esquire

In addition to its nationally recognized securities litigation department, Schiffrin & Barroway is at the forefront of an emerging area of complex litigation — actions brought on behalf of participants in defined contribution retirement savings plans (commonly known as 401(k) plans) harmed by the imprudent investment in employer securities. Schiffrin & Barroway is prosecuting several actions on behalf of employees and recently helped achieve a landmark settlement on behalf of Global Crossing employees.

A Wall Street darling during the internet boom, Global Crossing's grand plan was to provide an international fiber-optic infrastructure for the new "information economy." But when demand for space on its leveraged cable network never materialized, Global Crossing executives, including the company's founder and former Chairman Gary Winnick, allegedly manipulated the Company's publicly reported financials in order to prop up the Company's share price. The centerpiece of the Company's artifice to inflate its financial results was a series of "capacity swap" transactions, where Global Crossing sold space on its network while purchasing equivalent amounts from competing companies. These transactions (similar to the economically empty "round-trip" energy trades utilized by Enron) had little purpose beyond increasing the company's revenue figures and were often strategically consummated at the end of a fiscal quarter.

When the truth regarding Global Crossing's widespread accounting and financial reporting fraud became public, the Company was sent into a downward spiral and ultimately filed for bankruptcy protection in January 2002 (the 4th largest bankruptcy filing in U.S. history). Unfortunately for many Global Crossing employees, a large portion of their retirement nest egg was invested in Global Crossing stock.

Schiffrin & Barroway filed suit under the Employee Retirement Income Security Act ("ERISA") on behalf of participants in the Global Crossing 401(k) plans, alleging that the plans' fiduciaries failed to: (1) prudently manage and protect the plans' investments; (2) inform the plans' participants of the true financial health and prospects of the company; and (3) resolve inherent conflicts of interest involving certain company executive-fiduciaries (Mr. Winnick is alleged to have pocketed millions from insider sales of Global Crossing securities).

The court appointed Schiffrin & Barroway as Co-Lead Counsel with responsibility for prosecuting these claims. Following more than two years of hotly contested litigation, the parties arrived at an agreement to settle the claims. The settlement called for a payment of $79 million to help offset devastating losses to the

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retirement savings of current and former Global Crossing employees, and included a personal contribution of $25 million from Mr. Winnick.

This settlement represented the largest recovery ever achieved in a 401(k) company stock case and recently received final approval from Judge Gerard Lynch of the United States District Court for the Southern District of New York on November 4, 2004.

OBTAINING CORPORATE GOVERNANCE RELIEF IN SECURITIES SETTLEMENTS

By Eric Zagar, Esquire

In securities class action litigation, Schiffrin & Barroway is increasingly focusing on obtaining not only a substantial monetary recovery to compensate injured investors for their past losses, but also corporate governance relief to strengthen companies' processes and procedures for the benefit of investors well into to the future. In a case where the company does not have sufficient cash or insurance coverage to compensate injured investors, Schiffrin & Barroway may negotiate a settlement in which class members receive shares of stock in the company to compensate for some or all of their losses. Corporate governance relief is particularly appropriate where there is an equity component to a settlement, because when class members receive stock in a company, they have a stake in how the company performs going forward. Academic studies show that companies with good corporate governance tend to outperform others, and Schiffrin & Barroway has been and will continue to be a strong advocate for meaningful corporate governance relief in appropriate cases. The institutional investor community, in particular, has demonstrated a keen interest in corporate governance relief, and Schiffrin & Barroway often meets with institutional investors to discuss the corporate governance goals they seek to achieve. Schiffrin & Barroway also frequently consults with some of the nation's leading corporate governance experts who are on the cutting edge of academic research and real world applications of corporate governance policies and practices.

The academic literature and leading experts agree that the foundation for all good corporate governance is a strong board of directors that is willing and able to act independently of management. In securities and derivative litigation, Schiffrin & Barroway frequently advocates and achieves meaningful relief to enhance board independence, including such measures as:

- Allowing shareholders to nominate one or more directors to the board
- Requiring the Chairman of the Board to be an independent director
- Declassifying the board such that all directors are elected annually
- Creating new independent board committees to oversee particular areas of concern, such as regulatory compliance

In cases of accounting fraud, Schiffrin & Barroway can obtain relief to enhance the company's audit functions, including requiring the company to rotate outside auditors every three to five years and requiring audit committee members to certify the accuracy of the company's financial statements. Moreover, like many institutional investors, Schiffrin & Barroway often focuses on executive compensation as an area ripe for reform. To keep executive compensation in check, Schiffrin & Barroway can negotiate settlements to obtain such measures as requiring executive officers to adopt pre-set stock trading plans pursuant to SEC Rule 10b5-1 and eliminating the use of stock options to compensate executive officers in favor of restricted stock that vests over time.

Schiffrin & Barroway is a leader in obtaining meaningful corporate governance relief that provides long-term benefits to injured shareholders. To learn more about Schiffrin & Barroway's corporate governance practice, please contact either Robert Weiser, Esq. or Eric Zagar, Esq. at 610-667-7706.

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