

Business Law News

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SUPREME COURT OF THE UNITED STATES

**Stoneridge Investment Partners,
LLC v. Scientific-Atlanta, Inc., et al.,
128 S.Ct. 761 (2008).**

Stoneridge Investment Partners brought a securities fraud class action lawsuit against Scientific-Atlanta and Motorola in United States District Court under Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5. Stoneridge alleged losses were incurred after purchasing Charter Communications, Inc. common stock due to sham arrangements made between Charter, Motorola, and Scientific-Atlanta to increase Charter's cash-flow.

In a 5-3 decision, the Supreme Court held that "[r]eliance by the plaintiff upon the defendant's deceptive acts is an essential element of the Section 10(b) private cause of action." Here the respondents "had no duty to disclose; and their deceptive acts were not communicated to the public." Because no public investors had any knowledge of this "scheme," they had no reliance upon it in making their investment decisions. Though Motorola and Scientific-Atlanta may have known about the "scheme," the court felt that the securities laws at issue did not offer a private right of action against 3rd party actors. This decision will likely to limit 3rd party liability in securities cases to prosecution by the government.

**Knight v. Commissioner of Internal
Revenue, 128 S. Ct. 782 (2008).**

The U.S. Supreme Court in a unanimous decision held that the deductibility of fees paid by a trust was limited to fees in excess of the two-percent floor, since 26 U.S.C.A. Section 67(e)(1) allowed full

deductibility only if the costs would not have been incurred if the property were not held in trust. The court determined that to allow a full deduction for costs incurred by trusts the proper test for whether those costs escaped two percent floor was whether they would not "commonly" or "customarily" be incurred by individuals. This decision overturned the case O'Neill v. Commissioner, 994 F.2d 302.

This holding has expanded the 2 percent rule to managed trusts. The strongest effect will be felt by a trust with a large income for the year because the deduction of management fees tied to the gain can only be deducted after two percent of the adjusted gross income of the trust.

SEVENTH CIRCUIT

**The HA2003 Liquidating Trust v.
Credit Suisse Securities (USA) LLC,
2008 U.S. App. LEXIS 3504
(7th Cir. Feb 20, 2008).**

In the winter of 1999, HA-LO agreed to purchase Starbelly for about \$100 million in cash and stock. HA-LO hired Credit Suisse First Boston (CSFB) to issue a fairness opinion in which the company stated that the merger was fair to HA-LO from a financial point of view. CSFB was contracted to issue this opinion based on a valuation of Starbelly provided by HA-LO management. The CEO of HA-LO provided his own projections and ignored those of CSFB in making the fairness opinion.

HA-LO subsequently filed for bankruptcy and the trustee of the estate sued CSFB alleging that CSFB was negligent in issuing its fairness opinion based solely on HA-LO management's valuation of Starbelly. The district court held in favor of

CSFB and the Seventh Circuit affirmed. The court held for CSFB stating, "CSFB did not write an insurance policy against managers' errors of business judgment. Compelling investment banks to provide business-risks insurance as part of a fairness opinion would just make investors worse off, as that would increase the price of each opinion. Investors would pay *ex ante* for any benefit received *ex post* — and the bar would pocket a substantial portion of the transfer payments."

This holding is beneficial to investment banks who issue fairness opinions. The holding limits the liability the bank can face and does not require a full investigation of the information it is given by the company and relies upon, unless otherwise required to do so by contract.

NINTH CIRCUIT

**NLRB v. Friendly Cab Company,
2008 U.S. App. LEXIS 259
(9th Cir. Jan. 10, 2008).**

The recent Ninth Circuit ruling in NLRB v. Friendly Cab Co. has further narrowed the definition of an independent contractor. Generally, a worker is considered an independent contractor and not an employee if the risk of profit or loss falls on the worker. In the case at hand, a cab driver would pay the Friendly Cab Company between \$450 and \$600 per week to use the taxis, choose their own work hours, and keep the fares. Based on the totality of the circumstances the Ninth Circuit held that there was no independent contractor relationship, emphasizing that, "[a]lthough some of these factors individually may not constitute substantial control, the NLRB reasonably concluded that these factors taken together overcame any evidence of independent contractor status."

The holding of this case is of extreme importance to companies in deciding whether to designate a worker as an employee or independent contractor. In weighing the factors, an owner will know how to determine the pros and cons of whether giving more control to the worker outweighs the tax benefits of having an independent contractor.

DEVELOPMENTS

The Microsoft Antitrust Battle Continues

After years of litigation before the European Commission and a final judgment against Microsoft regarding the abuse of its dominant position in the Operating System and Internet Explorer web browser market, on February 27, 2008, the European Commission (EC) hit the company with another \$1.35 billion dollars in fines because Microsoft

failed to comply with the EC's 2004 anti-trust order. This emerged after the Commission launched another investigation in January 2008 into the corporation's abuse of its dominance in the PC market and the interoperability of its Windows Operating System with other software.

The original order in 2004 against Microsoft emerged from allegations that the company violated EC Article 82 prohibiting the abuse of a dominant position by freezing out rivals in products like media players and web browsers. Additionally, the EC had alleged that Microsoft unfairly bundled its Internet Explorer browser with its Windows operating system at the expense of rivals. This decision, which the EC Court of First Instance upheld in 2007, required Microsoft to allow non-Microsoft work group servers to access its interface documentation so they have a viable chance of competing with the company by achiev-

ing full interoperability with Windows computers at a reasonable price. After the March 2004 decision, for three years, Microsoft started to provide this access, but it charged a hefty royalty and licensing fee that discouraged competitors from participating in the market. The EC again in March 2007 issued an order reiterating Microsoft's duty to allow interoperability in a "reasonable and non-discriminatory" manner and stated that the company charged unreasonable prices for this access.

Only after October 22, 2007 did Microsoft start providing licenses at a lower rates. This, because the EC determined that Microsoft continued to charge these unreasonably high prices for the time between June 21, 2006 to October 22, 2007, the Commission issued this fine in February 2008. **BLB**