

## **STATEMENT OF THE NATIONAL ASSOCIATION OF SHAREHOLDER AND CONSUMER ATTORNEYS ON PROPOSED LIMITATIONS ON INVESTOR RIGHTS**

May 31, 2008

The call for a hearing on the Milberg Weiss prosecutions and other measures related to the case by a few Members of Congress indicate that opponents of the legal rights of investors and investor advocates have seized upon wrongdoing by a small number of individuals in one firm to incorrectly claim wrongdoing by the entire bar. On this basis, they imply that many securities class actions are frivolous and assert further reform of the lead plaintiff system is needed.

The National Association of Shareholder and Consumer Attorneys (NASCAT) strongly condemns the admitted actions of a handful of individuals who all worked together at Milberg Weiss during the time period covered by the charges. Their conduct was unacceptable and wrong. The guilty parties are being punished by our judicial system, which is working as intended.

Nevertheless, no judge or other objective authority has questioned the merits of the actual securities fraud class action lawsuits underlying the charges in these cases. Clearly, if the plaintiffs allegedly “recruited” by those individuals had not filed these suits, others would have. Indeed, a likely substantial motivation in most instances behind the alleged scheme was to be the first to file a suit in obvious securities frauds and thereby become lead counsel for the entire class of plaintiffs, which was the prevailing rule prior to enactment of the reforms of the Private Securities Litigation Reform Act of 1995 (PSLRA).

Moreover, focusing further on wrongdoing by a few attorneys at one law firm that is already the subject of federal judicial proceedings is a waste of valuable Congressional time. Instead, all authorities should focus on the critical mission of protecting investors and consumers from corporate wrongdoing and seeking recovery of, and remedies for, the very real losses and harm suffered by aggrieved consumers and investors. These include pension funds, seniors, families saving for education and retirement, consumers, patients and employees who wear both blue and white collars.

While incorrectly concluding there is a systemic problem with the plaintiff-attorney relationship in securities class actions, one Member of Congress goes on to propose requiring judges to referee a “bidding” contest between attorneys seeking to serve as lead counsel. Ironically, as already determined in 2002 by the exhaustive analysis of a Task Force of the United States Court of Appeals for the Third Circuit, such contests are “inconsistent with the goal of the Private Securities Litigation Reform Act of 1995 which is to assure that the ‘most adequate’ plaintiff will choose counsel and negotiate a reasonable fee.”

Under the PSLRA, the “most adequate plaintiff” who serves as lead plaintiff in a securities class action is typically found among our nation’s largest public, union and private pension funds. Indeed, in the top three securities class actions filed in the past ten years, the lead plaintiffs were the Board of Regents of the University of California (lead plaintiff in Enron Corp. suit), New York State Common Retirement Fund (lead plaintiff in WorldCom suit), and the California Public Employees Retirement System, New York State Common Retirement Fund and New York City Funds, which served as co-plaintiffs in the Cendant Corporation fraud case. Currently, the New York State Common Retirement Fund and the New York City Pension and Retirement Funds are prosecuting the securities class action against Countrywide Finance Corporation and others involved in the massive mortgage-related fraud allegedly perpetrated against investors in that company.

Clearly, such lead plaintiffs are more than equal to the task of selecting, retaining and supervising counsel, under the guidance of the rules and procedures established by the PSLRA and federal judicial procedure.

Giving lead plaintiffs more control over the conduct of class actions was a central reform of the PSLRA. And, to quote the Third Circuit’s task force report, the “PSLRA mandates that class actions should be client-driven, not court-driven.”

At a time when the nation is grappling with the sub-prime mortgage meltdown, the Bear Stearns fiasco, rising home foreclosures, business bankruptcies and out-of-control energy costs, the recent call for a Congressional hearing and legislation addressing the Milberg Weiss case are misdirected activity and unfortunate distractions from the business at hand.

Investor confidence is built upon strong securities regulation, law enforcement and investor rights. Imposing unnecessary limitations upon investors’ rights of action can only weaken confidence in our already troubled markets.

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