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**CONGRESS SHOULD ROLL BACK “SILLY” FED COURT DECISIONS THAT DENY INVESTOR FRAUD CLAIMS WHEN EXECUTIVES AND THEIR ADVISORS “COOK THE BOOKS,” SAYS DUKE LAW PROF. JAMES COX, AN NASD LEGAL ADVISOR**

**U.S. Court Decisions Undermine Securities Fraud Deterrence & Deny Investor Recoveries of Fraud Losses**

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Congress should rollback the *Central Bank* (1994) and *Stoneridge* (2008) Supreme Court decisions, which eliminated private liability for aiding and abetting securities fraud and otherwise participating in fraud schemes, according to James D. Cox, Brainerd Currie Professor of Law, Duke University School of Law, who is an expert on corporate governance and securities law and a member of the Legal Advisory Board to the National Association of Securities Dealers (NASD), which operates the NASDAQ securities exchange and helps oversee a major Wall Street self-regulatory agency. Professor Cox also urges Congress to clarify the less known *Dura Pharmaceuticals* Supreme Court decision (2005), which has enabled conservative lower federal courts to deny shareholders fraud claims when executives do not explicitly admit they engaged in fraud.

During a March 6th Vanderbilt University Law School federal regulatory conference in Nashville, Professor Cox addressed these issues. While explaining the critical role of private securities fraud lawsuits in law enforcement and investor protection, Professor Cox said:

*"The objectives of securities law enforcement should be fraud deterrence and investor recovery. Private law suits are critical to both deterrence and investor recoveries. The SEC has been woefully deficient in recovering investor fraud losses, compared to private law suits. Historically, SEC funding has been too low to fully cover markets rapidly expanding in both size and complexity and there has also been political interference at times. Making the SEC the sole enforcer, by enabling a continued diminishing of private enforcement actions, will exacerbate these historic problems by reducing the deterrent value and investor recoveries accomplished through private law suits. In this context, the 'Central Bank' and 'Stoneridge' Supreme Court decisions, combined with overly restrictive lower court interpretations of the 'Dura' decision on loss causation and corporate disclosures, are simply silly. Taken together, these judicial actions effectively permit publicly traded corporations and their accountants and attorneys to 'cook the books' and otherwise get away with fraud so long as they do not issue a news release publicly admitting they engaged in wrongdoing and collaborated in fraud schemes. These decisions have been needlessly destructive of private enforcement and fraud deterrence."*

To illustrate some of the problems with these court decisions, Professor Cox cited the well-known roles of *Central Bank* and *Stoneridge* in shutting the door to Enron investors seeking recovery of fraud losses from the investment banks that knowingly engaged in one of the largest securities frauds in American history. These decisions have also shut

the door to tens of thousands of defrauded investors seeking recovery of losses in other cases.

Professor Cox also cited the less known 2008 *Metzler* decision by the U.S. Court of Appeals for the Ninth Circuit (covering the West Coast), which dismissed a securities class action law suit alleging fraudulent revenue recognition and insider trading by managers of the for-profit Corinthian Colleges, Inc. Corinthian allegedly inflated earnings by falsely recognizing as revenue student tuition that had not yet been paid and received. During the time period covered by the alleged fraudulent financial statements, senior managers sold significant portions of their Corinthian share holdings. The chief financial officer, for instance, sold all of his shares. Yet, the Court cited the *Dura* Supreme Court decision to dismiss investors' claims because it found no causal relationship between the news release issued by Corinthian announcing problems with tuition and enrollment -- but, which did not overtly admit accounting fraud -- and the subsequent stock price drop that exceeded 40 percent.

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