

IN BRIEF

Spring/Summer 2010
Volume IV
milberg.com

Contents

Noteworthy Results	2	Firm Expansion	4
Attorney Accolades	2	Milberg in the Community	4
Current Case Highlights	3	Speaking Engagements	4

Milberg Wins Multi-Billion Dollar Verdict in Vivendi Securities Fraud Trial

On January 29, 2010, Milberg, representing the Retirement System for the General Employees of the City of Miami Beach and several individuals, secured a jury verdict with co-counsel entitling the class to recover an estimated \$9.3 billion, or €6.6 billion, potentially the largest recovery ever to be obtained in a securities fraud case.

The plaintiffs alleged that defendant Vivendi concealed its true liquidity condition from the investing public from October 30, 2000 to August 14, 2002. The litigation involved extensive discovery, including the review of over 4 million pages of documents and depositions of more than 60 witnesses.

The jury trial commenced on October 5, 2009 and lasted nearly four months. Milberg senior partners Matthew Gluck and Michael C. Spencer conducted the examinations of the most important fact witnesses, including Vivendi's former CEO and CFO, and examined both sides' accounting and economic loss causation experts.

"I can only say that this is by far the best tried case that I have had in my time on the bench."

In describing the work of the attorneys trying the case, Judge Richard J. Holwell stated, "I can only say that this is by far the best tried case that I have had in my time on the bench. I don't think either side could have tried the case better than these counsel have."

• *In re Vivendi Universal, S.A. Securities Litigation (S.D.N.Y.)*

Unanimous Supreme Court Allows Vioxx Securities Class Action to Proceed

On April 27, 2010, the United States Supreme Court unanimously ruled that investors' federal securities fraud claims against Merck & Co., Inc. were not barred by the statute of limitations. Milberg is co-lead counsel for the plaintiffs.

The Court held that the two-year statute of limitations for securities fraud actions does not begin to run until a plaintiff actually discovers or reasonably should have discovered the fraud. The Court rejected Merck's arguments that the statute of limitations can begin to run even when the plaintiff could not have discovered the fraud, which would effectively reward those who successfully conceal fraudulent conduct.

The Court's ruling is a significant victory not only for Merck investors, but for all investors. The case will be remanded to the District of New Jersey, where Milberg will continue to prosecute vigorously the plaintiffs' claims.

• *Merck & Co., Inc. v. Reynolds (U.S.)*

FPPTA Honors Milberg

On March 24, 2010, the Florida Public Pension Trustees Association ("FPPTA") presented Milberg with an award recognizing the Firm's "outstanding contribution and participation" in the 10th Annual Certified Public Pension Trustee Continuing Education Wall Street Program.



Milberg partners Christopher S. Polaszek and Ariana J. Tadler (second and third from left) and Anita B. Kartalopoulos (far right) with FPPTA officers Peter C. Hapgood and Kim E. Ryals

Noteworthy Results

Milberg Achieves \$62 Million Recovery and Corporate Governance Reform in Converse Derivative Litigation Settlement

Milberg, led by partners Benjamin Y. Kaufman and Neil Fraser, served as co-lead counsel in this derivative action stemming from alleged stock option backdating practices by former directors and officers of Converse Technology, Inc., a communications technology company. The **\$62 million** settlement requires significant corporate governance reform, including the removal and replacement of the offending directors and officers with independent directors and officers; the amendment of the company's bylaws to permit certain long-term substantial shareholders to propose nominees for election as directors; and a requirement that all equity grants be approved by both the compensation committee and a majority of the non-employee members of the board. Prior to achieving this settlement, the plaintiffs successfully litigated demand futility, obtaining a favorable 2008 New York Appellate Division opinion clarifying demand futility standards and holding that a board of directors loses the protection of the business judgment rule where there is evidence of self-dealing and poor judgment.

- *In re Converse Technology, Inc. Derivative Litigation* (N.Y. Sup. Ct. N.Y. Cty.)

Milberg Secures \$2 Million Settlement in Opnext Securities Litigation

In January 2010, the court approved a **\$2 million** settlement in this case in which Milberg, led by partners Sanford P. Dumain and Leigh Smith, served as co-lead counsel. Milberg represented investors who bought stock traceable to the company's February 14, 2007 initial public offering ("IPO"). The plaintiffs alleged that the registration statement and prospectus issued in connection with the IPO understated the company's net losses and overstated net income. In approving the settlement, the court stated that co-lead counsel provided "very professional and highly-skilled work" on behalf of the class.

- *In re Opnext, Inc. Securities Litigation* (D.N.J.)

"Very professional and highly-skilled work" on behalf of the class.

Securities Fraud Case Against Sara Lee Corporation Settles for \$4.25 Million

After more than six years of hard-fought litigation, Milberg, working with other plaintiffs' counsel, achieved a **\$4.25 million** cash settlement for the Class. As plaintiffs' co-lead counsel, Milberg represented a class of purchasers of Sara Lee common stock during the period August 1, 2002 through April 24, 2003. The plaintiffs alleged that Sara Lee and certain of its officers made misstatements and omissions of material facts regard-

ing the company's business, operations, management, and the value of the company's common stock. The plaintiffs asserted claims for violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

- *In re Sara Lee Corporation Securities Litigation* (N.D. Ill.)

Attorney Accolades

Once Again, Risk Metrics Ranks Milberg Among Top Law Firms in Securities Class Action Settlements

2009 marks the third year in a row that Risk Metrics, a leading provider of corporate governance services to the global financial community, has ranked Milberg among the top law firms in its "SCAS 50" survey for total dollars recovered in class action settlements. In addition, every year since 2003, Risk Metrics has ranked Milberg among the top law firms in its "Top 100 Settlements Quarterly Report." The rankings can be viewed at www.riskmetrics.com.

New York University School of Law Honors Professor Arthur R. Miller

Each year, the New York University School of Law dedicates a volume of the *Annual Survey of American Law* to a preeminent jurist, scholar, or legal practitioner. Arthur R. Miller, special counsel at Milberg, was selected as the 2010 honoree for this prestigious recognition for his achievements and contributions to American law. Speakers at the ceremony included Justice Ruth Bader Ginsburg, Judge Robert D. Sack, former ABC anchor Charles Gibson, CNN senior analyst Jeffrey Toobin, and Milberg partner Brad N. Friedman.



NYU School of Law honors
Milberg's Arthur R. Miller

Milberg Selected for Law360's Securities Firms of 2009

Law360, the newswire for business lawyers, named Milberg as one of its "Securities Firms of 2009," based in part on Milberg's representation of the plaintiffs in the IPO litigation, which recently settled for \$586 million. Law360 further noted certain of Milberg's recent settlements on behalf of its institutional clients,

(Attorney Accolades, cont'd from page 2)

as well as the Firm's representation of victims of Bernard L. Madoff's infamous Ponzi scheme.

Ariana J. Tadler Recognized as One of Lawdragon's 500 Leading Lawyers in America

Milberg partner Ariana J. Tadler has been recognized by Lawdragon, a legal media company that reviews lawyers and judges, as one of the "500 Leading Lawyers in America." Less than one percent of the legal profession is selected for this prestigious honor.

Current Case Highlights

Plaintiffs Prevail in Motions to Remand Fairfield Derivative Actions to State Court

On December 23, 2009, Judge Victor Marrero of the Southern District of New York granted the plaintiffs' motions to remand three derivative actions asserting claims for breaches of fiduciary duty. These actions were brought by investors, represented by Milberg, on behalf of three Bernard L. Madoff "feeder funds," against several defendants, including Fairfield Greenwich Limited and Fairfield Greenwich Advisors LLC, which provided advisory and administrative services for the feeder funds. The court ruled that the defendants improperly removed the actions to federal court under the Class Action Fairness Act ("CAFA") and remanded the cases to the New York Supreme Court. In so ruling, the court criticized the defendants' reading of CAFA as "astoundingly expansive."

- ***In re Fairfield Greenwich Group Derivative Litigation (N.Y. Sup. Ct. N.Y. Cty.)***

Plaintiffs Defeat Motion to Dismiss Class Action Against National Arbitration Forum

Milberg serves as co-lead counsel in a class action against the National Arbitration Forum ("NAF"), in which the plaintiffs allege that arbitrations conducted under the auspices of NAF heavily favored creditors (generally banks), causing the plaintiffs (generally credit card users) to participate in a flawed and biased arbitration process. The plaintiffs further allege that a law firm and debt collection agency affiliated with NAF participated in the biased arbitration process to the benefit of their common owners. Based on these allegations, the plaintiffs assert claims of fraud, deceptive and unlawful trade practices, and RICO violations. The defendants moved to dismiss these claims, arguing that arbitrations are immune from judicial interference. The court denied the defendants' motion to dismiss on February 22, 2010, holding that biased and flawed arbitrations are not protected from judicial scrutiny. The Firm continues to litigate vigorously this case on behalf of the plaintiffs.

- ***In re National Arbitration Forum Trade Practices Litigation (D. Minn.)***

Milberg Appointed Co-Lead Counsel in Ponzi Scheme Case Against Banks

Milberg was appointed co-lead counsel in a class action against Wells Fargo Bank and Bank of New York Mellon arising from their alleged roles in causing more than \$1 billion in losses to investors in Medical Capital Holdings, Inc.

Over six years, Medical Capital raised \$2.2 billion from 20,000 investors for five special purpose corporations that were supposedly investing in medical receivables. The investors' funds were entrusted to the defendant banks to ensure that the funds were used for proper investments and expenses. Instead, the defendant banks allegedly allowed Medical Capital to charge investors hundreds of millions of dollars in "administrative fees," purchase inappropriate assets (including a lavish multi-million dollar yacht), and use new investors' funds to pay older investors - a classic characteristic of a Ponzi scheme. The SEC sued Medical Capital in July 2009, resulting in the removal of Medical Capital's management and the implementation of a receiver.

In appointing Milberg co-lead counsel for the plaintiff investors, the court described Milberg as "esteemed" and "renowned."

- ***Masonek v. Wells Fargo Bank, N.A. (C.D. Cal.)***

Milberg Defeats Defendants' Demurrer in Ryland Group Derivative Action

Milberg represents the City of Miami Police Relief and Pension Fund in this stockholder derivative action against certain directors and officers of The Ryland Group, Inc. The action alleges breaches of fiduciary duty, waste of corporate assets, unjust enrichment, and violations of state and federal laws. Recently, the court overruled defendants' demurrer seeking to dismiss the case on demand futility grounds. Rejecting the defendants' arguments, the court found that the plaintiff adequately pled demand futility, explaining that "the particularized facts alleged in this complaint establish that these directors are not capable of exercising independent business judgment"

- ***City of Miami Police Relief and Pension Fund v. Drier (Cal. Super. Ct. L.A. Cty.)***

Milberg Unites With Governance for Owners USA to Promote Corporate Governance

Milberg is proud to announce its collaboration with Governance for Owners USA, Inc. Through this alliance, Governance for Owners provides its extensive knowledge and experience in corporate governance to complement Milberg's securities litigation practice on behalf of investors and consumers. Working together, Milberg and Governance for Owners look forward to pursuing corporate remedies that include governance structures to provide long-term management accountability and improved shareholder value.

Firm Expansion



Azra Z. Mehdi
Partner

Azra Z. Mehdi Joins Milberg

Milberg is pleased to announce that Azra Z. Mehdi has joined the Firm as a partner in the Los Angeles office. Ms. Mehdi brings extensive experience in securities, consumer, and anti-trust litigation. She represents both institutional and individual investors - in the United States and internationally - in recovering losses resulting from corporate fraud.

Milberg Hires Three New Associates

Milberg's New York office recently welcomed three new associates. Louis A. Russo has joined the Firm's general securities practice; Jessica Sleater has joined the Firm's case development practice; and Oren Haker has joined the Firm's bankruptcy litigation practice.

Milberg in the Community

Milberg Volunteers Work to Revitalize Carroll Park

As part of Milberg's continuing commitment to volunteerism, the Firm participated in New York Cares' Hands On New York Day on April 24, 2010.



Milberg lawyers and staff spent the day helping the city rejuvenate Carroll Park in Brooklyn. Milberg is proud to be a part of Hands On New York Day, which strives to maintain New York City's parks, gardens, and community centers as spaces for recreation, relaxation, and community growth.

Milberg staff at Carroll Park

Milberg Partner Ariana J. Tadler Recognized for Pro Bono Service

MFY Legal Services, Inc. ("MFY") presented Milberg partner **Ariana J. Tadler** with the 2010 Partner in Justice Award "in recognition of exemplary pro bono service and commitment to ensuring equal access to justice for all." MFY is a non-profit organization that seeks to provide disadvantaged New Yorkers equal access to the judicial system through community-based representation. Ms. Tadler recently completed her service as chair of MFY's board of directors.

Speaking Engagements

Brad N. Friedman served on a panel entitled, "Access to Justice in Federal Courts: The Iqbal and Twombly Cases," moderated by **Professor Arthur R. Miller** at the New York University School of Law on January 21, 2010. Professor Miller also moderated a second panel entitled, "Access to Justice in Federal Courts: Class Action Restrictions & Other Limitations."

Anita B. Kartalopoulos, Benjamin Y. Kaufman, and W. Steven Bursey delivered a presentation entitled, "Using the Law to Protect and Gain Work," to the Southwest Regional Council of Carpenters in Las Vegas on February 11, 2010.

Milberg sponsored The Native American Finance Officers Association's Next Decade Finance Conference held in New Orleans on March 17, 2010. **Christopher S. Polaszek** was a panelist in a program entitled, "A Discussion on Fraud," and **Jonathan M. Landers** served on a panel entitled, "From Dead Ends to Disasters: Native American Finance at a Crossroads; Getting Ahead of Worst-Case Scenarios and Into Solution Mode."

On March 5, 2010, **Ariana J. Tadler** delivered a presentation entitled, "Class Actions in the United States" at the IV Seminar on Consumer Law: Class Actions, Conciliation, Banking and Finance Law, in Palermo, Italy.



Attorney advertising.
Prior results do not guarantee a similar outcome.

New York

One Pennsylvania Plaza
49th Floor
New York, New York 10119
T 212.594.5300 or
800.320.5081
F 212.868.1229

Los Angeles

One California Plaza
300 South Grand Avenue
Suite 3900
Los Angeles, California 90071
T 213.617.1200
F 213.617.1975

Tampa

Corporate Center One
2202 N. Westshore Blvd.
Suite 200
Tampa, Florida 33607
T 813.639.4248
F 561.892.8164

Detroit

One Kennedy Square
777 Woodward Avenue
Suite 890
Detroit, Michigan 48226
T 313.309.1760
F 313.447.2038

milberg.com

Copyright © 2010, Milberg LLP

