

January 2005

Top 10 Management Liability Settlements & Court Awards from 2004

Each January we present a summary of the most important Management Liability cases of the previous year. Narrowing the list to 10 is no simple matter, as we do not simply look at the size of settlement or award in dollar amounts. Instead, we assess the potential impact on the Management Liability industry and on future litigation.

In finalizing our list, we were tempted to stretch the year by a week so that we could include the WorldCom and Enron settlements. These will be addressed in our February Newsletter.

The cases reported below may be equally stunning in their own ways. We follow each summary with an indication of which aspect of Management Liability will be most affected.

1. Southland Securities: In a “thumb’s down” ruling, an appeals court handed a win to the defendant in the first major decision on the important procedural question of whether the group-pleading doctrine for securities cases can withstand the Private Securities Litigation Reform Act’s heightened pleading requirements. Making it tougher for the plaintiff bar in future cases, the court rejected the group-pleading doctrine, which allows plaintiffs to link certain defendants to alleged misstatements simply by pleading that the defendants were part of a “group” that likely compiled or published the documents involved. **[Impact: D&O]**

2. Citigroup: With a who’s who list of world-class financial institutions facing aiding and abetting charges in connection with WorldCom, Enron, Parmalat and others, Citigroup’s \$2.6 billion settlement brought closure to claims brought by roughly 170,000 WorldCom investors who said they were defrauded by inadequate due diligence in the review of some WorldCom bond offerings. Hailed as a watershed event by some, it may well stand as an indicator of similar settlements to come. **[Impact: E&O and D&O Coverage]**

3. Computer Hacker Sentenced: In the longest prison sentence ever handed down in a cyber case in the US, an individual was sentenced to nine years in a federal prison for hacking into the national computer system of a retail chain in an attempt to steal customers’ credit card information (using a technique known as wardriving). Even though the cyber criminals were unsuccessful, prosecutors pressing for a harsh sentence emphasized the potential harm that could have resulted from the plot that tapped into the wireless network of the store, used that connection to enter the chain’s central computer system, and installed a program to capture credit card information. **[Impact: Cyber]**

4. Wal-Mart: A federal judge certified the world’s largest glass-ceiling, gender discrimination lawsuit. The case, which alleges systemic denial of equal pay and promotion opportunities, could include as many as 1.6 million current and former female employees. The judge found enough evidence of common pay and hiring practices across the country to reject the company’s position that such decisions were made at the store level, rather than nationally. **[Impact: EPL]**

5. Emerging Communications: The influential Delaware Court of Chancery held three directors liable for more than \$148 million involved when stockholders were squeezed out of a going-private transaction. The court concluded that deceitful misconduct, a dishonest process for personal gain, and the appointment of a special committee consisting of only one disinterested member clearly constituted a sham. This decision continues the trend toward lowering the threshold of liability for directors. **[Impact: D&O]**

6. Global Crossing: The \$325 million international settlement of a class-action lawsuit on behalf of all shareholders of the company is believed to be the largest settlement to date on behalf of 401(k) pension plan participants. If this is any indication, there will be more

large Employee Retirement Income Security Act settlements to come in 2005. **[Impact: Fiduciary]**

7. Cardinal Bankshares: When the CFO refused to sign a quarterly financial statement with questionable journal entries that was to be submitted to the Securities and Exchange Commission, he was fired. The company held that he was dismissed for breaking a confidentiality agreement by asking to meet with the audit committee in the presence of his personal attorney. The FCFO won in the first successful Sarbanes-Oxley whistleblower action. **[Impact: EPL/D&O]**

8. Dura Pharmaceuticals: The US Supreme Court agreed to decide the question of whether a plaintiff in a securities fraud case must prove a causal connection between the alleged securities fraud and the decline in the stock price. Certain jurisdictions have established loss causation by merely showing that the purchase price was inflated due to material misrepresentations. This decision should resolve the conflict between the lower courts and will help determine the measure of damages in securities stock-drop cases that may run into the hundreds of millions of dollars. **[Impact: D&O]**

9. Morgan Stanley: In the first class-action gender discrimination case filed against a major Wall Street firm, the company agreed to pay \$54 million to settle allegations on the eve of trial. Of this total, \$12 million was marked to settle allegations of retaliation made by a former saleswoman who allegedly complained about discriminatory practices and who was ultimately fired. There is some concern that this settlement may be a harbinger of the potential size of damages in employment practices cases involving gender discrimination claims, especially those made against financial services companies. **[Impact: EPL]**

10. Bristol-Myers Squibb: As part of an overall legal strategy, the company paid \$300 million to settle certain shareholder claims that had already been dismissed, with no possibility of appeal. The reason for this unusual settlement was apparently to appease the Securities and Exchange Commission and disgruntled ex-shareholders. This action demonstrates the complexity and potential severity of today's shareholder litigation. **[Impact: D&O]**



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