

TOP 10 COURT AWARDS & SETTLEMENTS

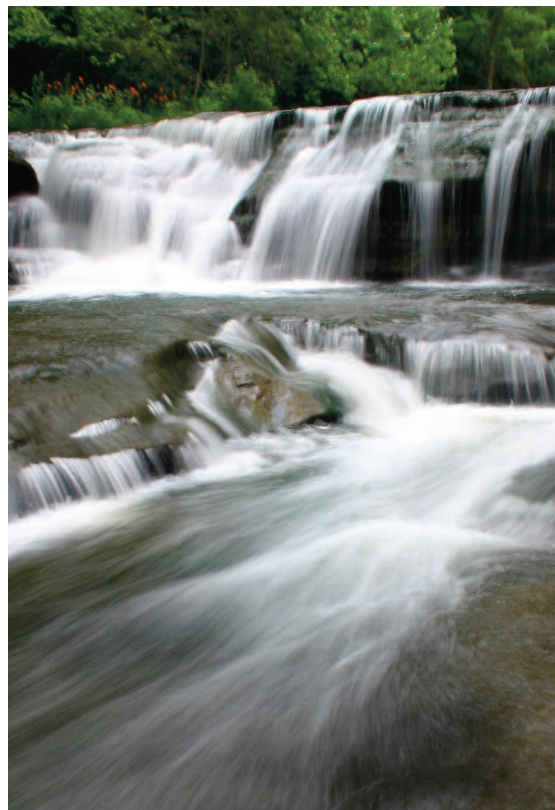
Every year we consider the court awards and settlements from the previous 12 months that we believe may be of significance to companies and their executives in the coming year and beyond. We limit our list to cases impacting Executive Risks exposures (Directors & Officers Liability, Errors & Omissions, Employment Practices, ERISA Fiduciary and Fidelity/Crime). The 2008 list may prove to be just a glimmer of bigger things to come in 2009.

1) SEC/CITIGROUP AND UBS

A \$30 billion settlement between the U.S. Securities and Exchange Commission (SEC) and two major financial institutions involved tens of thousands of customers who invested in auction rate securities before the market for those securities froze back in February. The deal sent a signal that the size of at least some of the settlements we can expect in 2009 and beyond as a result of the credit crunch will be big. VERY big. *Securities and Exchange Commission v. Citigroup Global Markets, Inc. and Securities and Exchange Commission v. UBS Securities, LLC and UBS Financial Services, Inc.* **[Impact: E&O, D&O]**

2) MILBERG WEISS

The assorted criminal prosecutions of several partners from the Milberg Weiss law firm demonstrate that crime doesn't pay even for the plaintiffs' lawyers. The firm spawned the term "being Lerached," meaning to be hit with a securities class action, sometimes within mere hours of announcing disappointing earnings and the follow-on drop in the company's stock price. Bill Lerach was one of the firm's partners who admitted to using a system of secret payments to lead plaintiffs that allowed the firm to dominate the securities litigation field. As a result of these prosecutions, several partners, including Lerach and Melvyn Weiss, are now doing time in federal penitentiaries. *Several cases.* **[Impact: D&O and E&O]**



3) PRICEWATERHOUSECOOPERS

This global accounting firm was hit with a significant court fine as a result of alleged auditing failures at a client that contributed to that firm's "deepening insolvency." This type of claim may gain traction in the year ahead. *Thabault v. Chait.* **[Impact: E&O and D&O]**

4) LARUE

When the Supreme Court decided that a participant in a 401(k) plan can sue fiduciaries at the firm whose alleged actions reduced the value of the participant's account, it broke with roughly 30 years of precedent surrounding traditional defined benefits plans. Although 401(k) plans are defined *contribution* plans, many expected the Court to apply the Employee Retirement Income Security Act (ERISA) similarly to both types of pension plans. LaRue dropped his case after it was returned to the lower court, but many fiduciaries remain worried. *LaRue v. DeWolff, Boberg & Associates.* **[Impact: Fiduciary]**

5) STONERIDGE

Many believe this case marked the end of private securities claims alleging scheme liability against third parties (or secondary actors). This Supreme Court decision puts the spotlight back on the SEC, as the government retains exclusive authority to pursue accountants, bankers, attorneys and other secondary actors, including business partners, as aiders and abettors of securities law violations. It will be interesting to see what they do with this sole power. *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*

[Impact: D&O]

6) CHOICEPOINT

The data storage and analysis company settled a securities class action arising out of a stock drop that followed the announcement of the theft of private client information on more than 150,000 individuals.

Unfortunately, such thefts are no longer rare. *Richard Perry, et al. v. ChoicePoint, Inc., et al.*

[Impact: D&O and E&O Network Security/Privacy]

7) GLENN

Does an unacceptable conflict of interest arise when the terms of a benefits plan give an insurer, acting as the plan administrator, the discretionary authority to determine validity of claims that the insurer itself would then be obligated to pay? The Supreme Court decided that the significance of the conflict of interest depends on the circumstances of the particular case. Those hoping the Court would create a bright-line test were disappointed. *MetLife v. Glenn*. **[Impact: Fiduciary]**

8) AT&T

The Supreme Court agreed to hear a retirement benefits case where the critical issue is similar to that addressed in the Court's controversial *Ledbetter* ruling back in 2007: can a worker sue for alleged discriminatory acts that occurred decades earlier? The current case involves service credits calculated today for maternity leave taken prior to the passage of the Pregnancy Discrimination Act. The answer to this question could have a major impact on many similarly situated employers. *AT&T Corp. v. Hulteen*. **[Impact: EPL]**

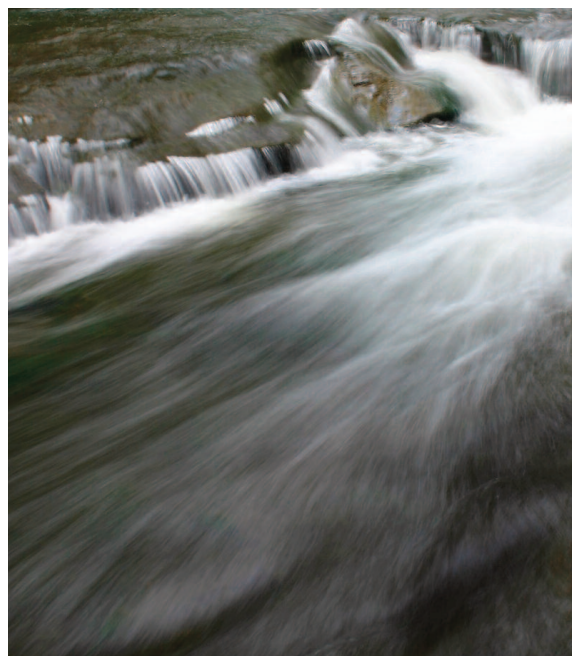
9) TROY

This decision from the influential Delaware Chancery Court signaled the potential for erosion of the indemnification rights provided to directors (and possibly officers) under a company's bylaws by allowing the company to unilaterally curtail or terminate these rights for retired directors. Previously, most assumed that indemnification and advancement rights vested, or became fixed, after the director's term of service. Now that these assumptions are no longer valid, many companies are building in additional protections for their directors and officers. *Schoon v. Troy Corp.* **[Impact: D&O]**

10) BECHTEL

Litigation over the fees related to 401(k) accounts is center stage for a number of corporate plan sponsors and their fiduciaries. In holding for the fiduciaries, a U.S. District Court in California made special note of the documented procedural prudence exercised by the plan's benefits committee. The court ruled that the fiduciaries acted appropriately and within their sound business judgment in maintaining the funds and, by extension, paying allegedly excessive fees. While procedural prudence has always been important for ERISA fiduciaries, this decision is good news for other major employers facing similar litigation. *Kanawi v. Bechtel Corp.*

[Impact: Fiduciary]



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