

A Biweekly
Newsletter of
Federal Securities,
Corporate &
Banking Law
Developments

SUPREME COURT CONFIRMS 4-YEAR STATUTE OF LIMITS FOR FEDERAL CLAIMS

In a just-issued opinion that could increase the risk of lawsuits for all companies, the U.S. Supreme Court held that a discrimination lawsuit filed in federal court against Donnelley, Inc. could proceed because the claim was allowed using a four-year statute of limitations under federal law rather than a two-year statute of limitations under state law.

Prior to 1991, federal courts looked at state laws to determine the statute of limitations for bringing a lawsuit under federal law if that federal law did not specify a limitation period. Because of the resulting state-by-state disparities when trying to enforce federal law, Congress enacted a law in December 1990 that set a four-year statute of limitations period for all claims brought under subsequently-enacted federal laws that did not have their own statute of limitations.

The plaintiffs in this case brought a discrimination action based upon a 1991 amendment to a federal law that had been adopted in 1866. The Supreme Court unanimously held that the law establishing the four-year statute of limitations also applies to post-1990 amendments if the amendment provides a part of the legal basis for the lawsuit. As a result, the new four-year federal statute of limitations applied to the plaintiffs' case, and the suit was considered timely filed and allowed to proceed.

Companies should consider whether they might face an expanded risk of federal lawsuits because of this ruling.

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- Supreme Court Confirms 4-Year Statute of Limits for Federal Claims
- Delaware Court Refines Director Independence Principles
- Rules Proposed for Expensing Stock Options
- Long Prison Sentence Upheld for Former Dynegy Executive
- DOL Proposes Changes to Existing Overtime Rules

If you would like more information on these topics or have any questions, please e-mail us at CorporateNotes@KutakRock.com.

■ DELAWARE COURT REFINES DIRECTOR INDEPENDENCE PRINCIPLES

Recently, the Supreme Court of Delaware dismissed a shareholder lawsuit challenging the independence of the board of directors of Martha Stewart Living Omnimedia, Inc.

In doing so, the court rejected a claim that mere social and business relationships among the directors was sufficient to show the directors were not independent. In *Beam v. Martha Stewart Living Omnimedia*, a shareholder filed a derivative lawsuit against Martha Stewart and five other directors of the company alleging that they did not act properly in handling Ms. Stewart's ImClone stock transactions, thereby causing damage to the company. The shareholder argued the claim did not have to go first to the board of directors, as would normally be the case, because the directors were not independent of management.

In ruling against the plaintiff, the court rejected the plaintiff's theory that professional and

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social relationships among the directors automatically created a "structural bias" against independence. **The court held that the "relationship must be of a bias-producing nature," such as if directors are beholden to each other or engaged in "cronyism," to raise a reasonable doubt about a director's independence.**

■ RULES PROPOSED FOR EXPENSING STOCK OPTIONS

On March 31, the Financial Accounting Standards Board issued a proposed rule that, if approved, would require companies to treat employee incentive stock option plans as an expense on corporate income statements for fiscal years beginning after December 15, 2004. Currently, those options do not create an expense, while the grant of stock gives rise to compensation expense upon vesting. Yet to be determined is a mutually agreeable method for valuing the options. The comment deadline for the proposed rule is June 30, 2004.

■ LONG PRISON SENTENCE UPHELD FOR FORMER DYNEGY EXECUTIVE

On April 26, a federal judge refused to reduce the 24-year prison sentence of Jamie Olis, the former Dynegy, Inc. official convicted of conspiracy and fraud in an energy trading scheme. The scheme resulted in a \$105 million loss to a pension fund investor but little gain to Olis. The judge also denied Olis' request to remain free on bond pending the appeal of his conviction. Had the judge found that calculation of the stock loss been too high due to a clerical mistake, Olis would have been eligible for a reduced sentence. However, the calculations were based on trial testimony that Olis did not refute, and therefore the judge used the loss amount in determining the sentence.

Recent changes in the federal sentencing guidelines (with no parole) have dramatically increased prison sentences for white-collar criminals.

■ DOL PROPOSES CHANGES TO EXISTING OVERTIME RULES

The U.S. Department of Labor just issued new regulations that mark a complete overhaul of the overtime rules contained in the Fair Labor Standards Act developed over 50 years ago. These regulations, which take effect in just three months, on August 23, 2004, set an income level below which workers would qualify (with specific exceptions) for overtime (\$23,660) and an income limit (\$100,000) above which a worker would never qualify, regardless of duties. Workers that earn between those two levels might qualify for overtime, depending upon their work and supervisory duties.

We will be distributing shortly a useful analysis prepared by our Labor and Employment Practice Group to guide you through the changes, including a side-by-side comparison of the old and new rules. **These new rules contain numerous planning opportunities for companies that want to effectively compensate key employees.**

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