

STOTT
BARCLAY
PETTUS
MOORE
WHIPPLE
&
DUGAN
INC.

A Professional
Corporation of
Certified Public
Accountants

September 10, 1992

12447
1/5/98
HR5828 P2

The Honorable Representative Mickey Edwards
House of Representatives
2330 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Representative Edwards:

I am writing to respectfully request you to co-sponsor legislation, the Securities Litigation and Civil Justice Preservation Act of 1992 (HR 5828), recently introduced by Representative Billy Tauzin (D-LA), to reform the currently unfair securities litigation system.

The American Institute of CPAs, of which I am a member, represents over 305,000 CPAs nationally. The AICPA belongs to a coalition of approximately 300 organizations (and counting) that supports meaningful securities litigation reform. The Coalition to eliminate Abusive Securities Suits (CEASS) includes a wide range of business representatives, among them accounting firms, the insurance industry, the securities industry, hi-tech companies, manufacturers and retailers.

The Tauzin legislation includes the following reforms to 10b-5 securities legislation. These reforms are designed to focus litigation on the merits so that baseless, harassment suits are eliminated and the actual victims of securities fraud are justly compensated:

- o **Proportionate Liability** -- Intentional defrauders would remain subject to joint and several liability, but defendants who did not engage in "knowing securities fraud" would be responsible only for their proportionate share of the plaintiffs' damages.
- o **Fee-shifting** -- Require unsuccessful litigants to pay the prevailing parties' attorneys' fees in order to discourage plaintiffs' attorneys from bringing unwarranted cases and give innocent defendants an incentive to fight unjustified claims.

8023 East 63rd Place - Suite 250 ■ Tulsa, OK 74133 ■ (918) 254-0433 ~ 2431 Nowata Place ■ Bartlesville, OK 74006 ■ (918) 333-9740

Without written permission, this material may not be copied or reproduced in any fashion, nor placed in any other repository.

This is a photocopy of materials held by the Carl Albert Congressional Research and Studies Center Congressional Archives, University of Oklahoma, Monnet Hall, Room 202, 630 Parrington Oval, Norman, Oklahoma 73019-4031.

The Honorable Representative Mickey Edwards
 September 10, 1992
 Page Two

- o **Curb Abusive Litigation Practices --** Prohibit (i) attorneys from paying "bounties" to induce potential plaintiffs to sue, (ii) payments to stockbrokers from referring plaintiffs, and (iii) law firms' use of their profit-sharing plans as a means of providing in-house plaintiffs.
- o **Clear and Convincing Proof Standard --** Establish a "clear and convincing" standard of proof for allegations of fraud to discourage suits based on a statement that in retrospect turned out to be inaccurate but that was not intended to mislead.
- o **Pleading Reform --** Require securities plaintiffs to prove the defendant acted with "scienter", or knowledge, of the fraudulent activity.
- o **Aiding and Abetting Liability --** Clarify that peripheral defendants are not liable as "aiders and abettors" unless they knowingly intended to assist the fraud for their own direct monetary advantage. This will eliminate unnecessary litigation and defendants will not be forced to settle cases simply because they are fearful of unjustified liability.

In addition, the legislation would extend the statute of limitations for private securities suits. Investors could file private suits within 5 years (current law - 3 years) after the date the alleged violation occurred; or 1 year after the alleged violation was discovered, whichever is earlier.

Under some state laws, CPAs are required to conduct business in the partnership form of practice -- where general partners are subject to unlimited personal liability exposure. As a result, in the current litigation environment, small CPA firms are unwilling to serve small and medium-sized entrepreneurial companies that need audits to raise capital in the capital marketplace. Because their stock prices are volatile, by nature, many start-ups and their CPA firms are sued whenever their stock price drops, no matter the reason. One of the larger firms disbanded last year -- due primarily to unreasonable litigation exposure.

The accounting profession is only seeking fairness -- not avoidance of reasonable and appropriate legal liability.

Without written permission, this material may not be copied or reproduced in any fashion, except as provided in any other repository.

This is a photocopy of materials held by the Carl Albert Congressional Research and Studies Center Congressional Archives, University of Oklahoma, Monnet Hall, Room 202, 630 Parrington Oval, Norman, Oklahoma 73019-4031.

The Representative Mickey Edwards
September 10, 1992
Page Three

To co-sponsor this legislation, please contact Dan Brouillette of Representative Tauzin's staff (5-4031). If you need any additional information, please contact Tom Higginbotham or Brian Cooney of the AICPA's Washington, DC office at (202) 737-6600.

Thank you for your consideration of this important legislation.

Sincerely,



Rick Dugan
Certified Public Accountant

Without written permission, this material may not be copied or reproduced in any fashion or placed in any other repository.

This is a photocopy of materials held by the Carl Albert Congressional Research and Studies Center Congressional Archives, University of Oklahoma, Monnet Hall, Room 202, 630 Parrington Oval, Norman, Oklahoma 73019-4031.

From the Collection of
THE HON. MICKEY EDWARDS