

SECURITIES LITIGATION AND ENFORCEMENT

CASES AND MATERIALS

Second Edition

Donna M. Nagy
Richard W. Painter
Margaret V. Sachs

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SECURITIES LITIGATION AND ENFORCEMENT

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Second Edition

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To Brian and Caitlin
D.M.N.

To Karen, Elizabeth, William and Anne
R.W.P.

To my Mother and to the memory of my Father
M.V.S.

Preface

This casebook fills a gap in currently available materials for securities law courses: the absence of materials designed specifically to acquaint students with the theoretical as well as practical aspects of federal securities litigation and enforcement. Important actions and issues are presented in the clusters in which they arise in actual securities litigation, thereby maximizing student preparedness to represent clients in private litigation, in enforcement actions by the Securities and Exchange Commission, and in criminal prosecutions. Even before the corporate governance and accounting scandals at Enron, WorldCom and numerous other companies, the need for such a casebook was great. But the scandals – and their fallout – have generated considerably more student interest in securities litigation and enforcement, in part because students (rightly) recognize its growing importance as an area of practice.

The second edition retains the structure of the first edition, while incorporating developments since 2003. In addition to several major Supreme Court decisions, these developments include the first criminal prosecutions under the Sarbanes-Oxley Act, class action settlements of unprecedented size, and expanded Commission enforcement activity that ranges from the backdating of stock options to insider trading at hedge funds. We enjoy the intellectual challenges that such developments provide and hope that your students do, too. The second edition also features a reorganized class action chapter.

We have designed this casebook for use in a variety of two or three credit courses or seminars. These include (i) a “securities litigation” course examining litigation topics under the Securities Exchange Act (e.g., Rule 10b-5, proxy fraud, tender offer fraud, class actions, and international securities fraud) as well as Securities Act liability for material misstatements and omissions, and securities arbitration; (ii) a course in “securities litigation and enforcement” that covers some of the just-mentioned topics but also encompasses SEC enforcement issues (including the conduct of SEC investigations and the professional responsibilities of lawyers and accountants), insider trading, market manipulation, and criminal enforcement; or (iii) more specialized courses or seminars that focus on such areas as enforcement, insider trading, or market manipulation, or that build around the theme of “current topics in securities litigation.”

A course or seminar in securities litigation and enforcement need not come after a course in securities regulation. We do not presuppose familiarity with the contents of the securities regulation course, and students who have not taken that course are at no disadvantage. But in order to challenge and stimulate more experienced students, we have included materials and problems that allow such students to explore doctrinal nuances and practical issues that they are unlikely to have encountered previously.

We have edited most of the cases and materials to keep each chapter a manageable length. Asterisks (***) indicate substantive omissions, but citations, footnotes, and concurring and dissenting opinions may have also been omitted

without a specific notation that such an omission has been made. Footnotes included in cases and materials retain their number from the original source.

Throughout our work on this casebook, we have been encouraged and informed by our many friends and colleagues in law schools and in the practicing bar. We hope that they—as well as others who use our casebook—will share their comments and suggestions for future editions.

DONNA M. NAGY
RICHARD W. PAINTER
MARGARET V. SACHS

October, 2007

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