SIDLEY AUSTIN LLP
SIDLEY

SEC ENFORCEMENT
QUARTERLY

3rd Quarter 2012

Each quarter, Sidley's SEC Enforcement Practice publishes this review of recent developments in SEC enforcement and related matters.

IN THIS ISSUE:

IS THERE A DUTY TO DISCLOSE A WELLS NOTICE?..............1

IS THE SEC STRETCHING ITSELF TOO THIN? 2

NEW SURVEY RAISES CONCERNS FOR AUDIT AND FINANCIAL REPORTING PROFESSIONALS................................3

FCPA FOCUS......................................4

SECOND CIRCUIT CLARIFIES "SUBSTANTIAL ASSISTANCE" STANDARD IN SEC AIDING AND ABETTING MATTER 5

SEC LOSES LAWSUIT AGAINST EX-CITIGROUP OFFICIAL.....................6

FIRST WHISTLEBLOWER AWARD UNDER DODD-FRANK 6

VISIT WWW.SIDLEY.COM
FOR MORE INFORMATION ON SIDLEY'S
SEC ENFORCEMENT PRACTICE

This Sidley update has been prepared by Sidley Austin LLP for informational purposes only and does not constitute legal advice. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this without seeking advice from professional advisers.

Attorney Advertising. For purposes of compliance with New York State Bar rules, Sidley Austin LLP's headquarters are 787 Seventh Avenue, New York, NY 10019, 212.839.5300 and One South Dearborn, Chicago, IL 60603, 312.853.7000

Prior results described herein do not guarantee a similar outcome.

IS THERE A DUTY TO DISCLOSE A WELLS NOTICE?

The default position for some practitioners is that public companies often should disclose the receipt of a Wells notice from the SEC's Division of Enforcement. The thinking goes that a Wells notice means an enforcement investigation has reached such an advanced stage that it is a "proceeding known to be contemplated by governmental authorities" and thus required to be disclosed by Item 103 of Regulation S-K. A recent case in the Southern District of New York, however, calls that conventional view into question.

In *Richman v. Goldman Sachs Group,* 247 F.R.D. 473 (S.D.N.Y. 2011), plaintiffs sued Goldman Sachs and some of its senior executives under Section 10(b), alleging that they had made material misstatements and omissions when they failed to disclose Goldman's receipt of Wells notices related to Goldman's role in the Abacus collateralized debt obligation ("CDO"). (Goldman separately settled with the SEC for its role in the Abacus CDO, paying a $550 million penalty in July 2010.) Goldman had received a Wells notice concerning the Abacus CDO on July 29, 2009. When the SEC filed a complaint against Goldman for its role in the Abacus CDO on April 16, 2010, Goldman's stock dropped approximately 13%.

The district court dismissed the complaint, reasoning that Goldman was under no legal duty to disclose its receipt of a Wells notice. The court first concluded that Goldman was not required to disclose the receipt of the Wells notice to make its prior disclosures about the pending SEC investigation of the Abacus CDO accurate and complete. Goldman had disclosed the existence of governmental investigations of its synthetic CDO practices, as early as January 27, 2009. The Court reasoned that Goldman's prior disclosures about the existence of a governmental investigation remained accurate even after receipt of the Wells notice, as the Wells notice "indicated that the governmental investigations were indeed ongoing." According to the court, "at best, a Wells Notice indicates not litigation but only the desire of the Enforcement staff to move forward, which it has no power to effectuate. This contingency need not be disclosed."

IS THERE A DUTY TO DISCLOSE A WELLS NOTICE? CONTINUED

Second, the court found that Goldman was not under a regulatory obligation to disclose the Wells notice. While Regulation S-K requires the disclosure of contemplated legal proceedings, "receipt of a Wells Notice does not necessarily indicate that charges will be filed." Nothing in Item 103 of Regulation S-K mandates the disclosure of a Wells notice, and no court had ever held that there was a duty to make such a disclosure. "When the regulatory investigation matures to the point where litigation is apparent and substantially likely to occur, then 10(b) disclosure is mandated. . . . Until then, disclosure is not required."

There is merit to the *Richman* court's reasoning: only the Commission can authorize the filing of an enforcement action, so the Enforcement Division's view, reflected in a Wells notice, cannot itself make litigation probable. The Commission can and does reject enforcement recommendations, as the *Richman* court explicitly noted.

Companies considering whether to disclose a Wells notice should pay attention to all surrounding circumstances, including prior disclosures about the progress of the investigation, materiality, and other possible consequences of disclosing a Wells notice. Companies should consult with their SEC enforcement and disclosure counsel in evaluating the best course following receipt of a Wells notice. S

IS THE SEC STRETCHING ITSELF TOO THIN?

Traditionally, a trial in an SEC enforcement case was the rare exception, as virtually all cases were resolved through settlements. While SEC cases still tend to settle, trials are becoming less rare. *Bloomberg Businessweek* recently reported that the number of cases the SEC's headquarters is actively litigating has doubled since 2010, with approximately ninety cases currently in active litigation. The sharp increase in the number of SEC cases heading for trial may be the result of an increasingly aggressive Enforcement Division reacting to the tremendous political pressure the Commission is feeling to bring cases, in particular those stemming from the financial crisis.

The SEC's aggressive enforcement strategy has resulted in a number of recent trends that have likely contributed to the Commission's heavier litigation caseload. First, the SEC has increasingly relied on charges based on novel or relatively untested legal theories, particularly in complex cases. Second, the SEC has brought cases under negligence-based charges even where it has not identified evidence of intentional wrongdoing. Third, the SEC has shown less willingness to settle cases on lesser charges, such as negligence-based charges, when it believes it can prove intentional wrongdoing. Further, the SEC has

RECENT SEC STAFF CHANGES

- In **May 2012,** Robert Kaplan, co-chief of the SEC's Asset Management Unit, announced he was leaving the SEC. Shortly after this announcement, the SEC promoted enforcement attorneys Julie Riewe and Marshall Sprung to serve as the deputy chiefs of the Asset Management Unit. Bruce Karpati, the co-chief of the Asset Management Unit, remains with the SEC and will oversee the entire unit.
- On **July 5, 2012,** the SEC announced that Norm Champ will be the Director of the agency's Division of Investment Management. He succeeds Eileen Rominger, who is retiring.
- On **July 9, 2012,** the SEC announced that Paula Drake has been appointed an Associate Director to serve as Chief Counsel and Chief Compliance and Ethics Officer in the SEC's Office of Compliance Inspections and Examinations (OCIE).
- On **July 19, 2012,** the SEC announced that Michele Wein Layne will be the Regional Director of the Los Angeles Regional Office. She succeeds Rosalind Tyson, who retired earlier this year.
- On **September 12, 2012,** the SEC announced that Andrew J. Bowden has been named Deputy Director of OCIE, succeeding Norm Champ. S

IS THE SEC STRETCHING ITSELF TOO THIN? *CONTINUED*

increasingly pursued individuals who traditionally are more inclined to defend themselves in court. These trends have created an enforcement environment in which defendants are less likely to settle and the SEC is forced to carry its burden of proof in court.

Of course, the SEC is under pressure not just to take cases to trial but to win them when it does. Winning cases at trial is key to the SEC building its credibility and forcing defendants to accept appropriate settlements. The SEC's chief litigation counsel Matthew Martens, has recognized as much. Martens commented: "At the end of the day, if we can't win cases, then people don't settle. That's the reality." This sentiment was echoed by the Director of the SEC's Enforcement Division, Robert Khuzami: "If you don't have a legitimate trial threat, if you don't communicate to the targets of your investigation that you're prepared to go to trial, then you can be exploited. . . . Defendants will simply hold out for a softer settlement and not fear the alternative."

The SEC historically has had a solid track record at trial. In testimony before the House Committee on Financial Services on May 17, 2012, Khuzami stated that the SEC has "prevailed against defendants in 84 percent of our trials since the beginning of fiscal year 2010." But recent high-profile trial losses for the SEC—including, most recently, *Stoker,* discussed on page 6, *"SEC Loses Lawsuit Against Ex-Citigroup Official"*—suggest this record may be difficult to maintain with the SEC's finite resources stretched over a growing trial docket. Indeed, the size of the trial unit at the SEC's headquarters has remained relatively flat, even in the face of its increased case load. In his House testimony in May, Khuzami noted the strain on resources that has resulted from the increase in litigation. He stated that the "cost of trials, both in terms of the thousands of staff time hours and other out-of-pocket costs such as expert witnesses, can be exorbitant."

If the SEC's aggressive enforcement posture continues at its current level, trials in SEC cases will likely become more common. The Commission and defendants less often will find common ground on which to build mutually agreeable settlements with trials as the inevitable result. With its limited resources the SEC will confront greater challenges vigorously pursuing and winning cases. As a result, the SEC's trial strategy may have the opposite of its intended result: if defendants believe that they are more likely to win at trial because the SEC is stretched too thin, then defendants who might previously have settled may decide to litigate in pursuit of more favorable outcomes. S

NEW SURVEY RAISES CONCERNS FOR AUDIT AND FINANCIAL REPORTING PROFESSIONALS

A recent Sidley Update reported on a new survey from four prominent business school professors that indicated some potentially troubling findings about how public companies report earnings. According to the survey of 169 public company CFOs, "the CFOs estimate that in any given period, roughly 20% of firms misrepresent their economic performance by managing earnings; for such firms, the typical misrepresentation is about 10% of reported [earnings-per-share]." According to the authors, these estimates may actually understate the prevalence of earnings management at public companies. Because of a relatively conservative approach to crafting the survey questions, the study's authors noted that "the answers to our questions can be thought of as a lower bound on actual earnings management encountered in practice." CFOs who responded to the survey also indicated that earnings management was somewhat more likely to be income-increasing, and that earnings misrepresentation "occurs most often in an attempt to influence stock price, because of outside and inside pressure to hit earnings benchmarks,

and to avoid adverse compensation and career consequences for senior executives." Widespread earnings management may lead to an increase in SEC enforcement actions involving accounting fraud and reporting violations. For more information on and analysis of this survey, please see our **prior update.** S

FCPA FOCUS

The Foreign Corrupt Practice Act continues to be a high enforcement priority of the SEC. Here are some highlights of FCPA enforcement from the past quarter. For more information on the FCPA, please see Sidley's Anti-Corruption Quarterly.

6/27/12: FalconStor Software Inc. agreed to pay federal authorities $5.8 million in penalties to settle cases involving improper payments it alledgedly made to a U.S. customer. FalconStor admitted concealing over $400,000 in bribes to a JP Morgan Chase official, including gambling slush funds and stock options.

The SEC's complaint charges FalconStor with violating the books-and-records and internal controls provisions as well as the offering registration provisions and certain antifraud provisions of the Securities Act of 1933. FalconStor agreed to pay the SEC $2.9 million and entered into a DPA with DOJ for an additional $2.9 million.

This case shows that the SEC can use its FCPA provisions in non-FCPA bribery cases involving non-foreign government officials.

6/28/12: A federal judge in Houston dismissed a whistleblower claim by a former employee against GE Energy who had alleged FCPA violations. The employee claimed he was fired for telling supervisors about potential bribes to win work. The judge ruled that the employee wasn't covered by Dodd-Frank because he didn't complain to the SEC. The judge also ruled against him on substantive grounds. General Electric Company settled an FCPA enforcement action with the SEC in July 2010.

7/10/12: Orthofix International N.V., a Texas-based medical device company, settled FCPA charges relating to alleged bribes in Mexico. The company agreed to pay the SEC $5.2 million, including $4.98 million in disgorgement and $242,000 in prejudgment interest. Orthofix will also pay DOJ a $2.22 million penalty and was given a three-year DPA that did not require appointment of a compliance monitor.

The complaint alleged that Orthofix's Mexican subsidiary bribed officials at Mexico's government-owned health care and social services provider. Orthofix self disclosed these actions to the SEC.

8/1/12: Chemical-maker Huntsman Corporation said in its SEC filing that the DOJ and SEC won't take enforcement action against the company for bribes allegedly paid in India by employees of a joint venture there. Huntsman self-disclosed the payments to the SEC and DOJ in 2010 and said it would cooperate. It also fired management employees involved in the improper payments. The company said it has a remediation plan for the environmental offenses not already resolved.

8/7/12: Pfizer Inc. agreed to pay the SEC $26.3 million in disgorgement of profits and pre-judgment interest to settle civil charges. The SEC and DOJ alleged that Pfizer's employees and agents paid bribes in Bulgaria, China, Croatia, Czech Republic, Italy, Kazakhstan, Russia, and Serbia to foreign officials "to obtain regulatory and formulary approvals, sales, and increased prescriptions for the company's pharmaceutical products."

Wyeth LLC, acquired by Pfizer three years ago, separately agreed to pay $18.8 million to the SEC in disgorgement and pre-judgment interest. A Pfizer subsidiary also settled with the DOJ and agreed to pay a $15 million criminal penalty, along with entering into a two-year deferred prosecution agreement to resolve FCPA violations.

8/7/12: Houston-based Hercules Offshore, Inc., an oil and gas services contractor that provides drilling, barge, and boat services, said in its SEC filing that following investigations, both the SEC and DOJ will take no enforcement action for possible FCPA violations.

8/16/12: Oracle Corporation agreed to pay a $2 million civil penalty to the SEC to settle FCPA charges arising from a slush fund in India used to pay bribes from 2005 to 2007. The DOJ didn't announce any criminal charges against Oracle.

8/16/12: Morgan Stanley's former managing director for real estate in China was sentenced to nine months in federal prison.

Garth Peterson pleaded guilty in April to a one-count criminal information charging him with conspiring to evade internal accounting controls that Morgan Stanley was required to maintain under the FCPA. He also agreed in April to pay about $250,000 in disgorgement and forfeit Shanghai real estate worth $3.4 million to settle civil FCPA charges filed by the SEC.

The DOJ and SEC declined to charge Morgan Stanley. They said the firm's compliance program "provided reasonable assurances" that Morgan Stanley's employees were not bribing government officials. Peterson, they said, was a "rogue employee."

8/22/12: The SEC, in implementing § 1504 of Dodd-Frank, adopted a rule that requires issuers in the extractive industries, including all public mining and oil and gas companies, to disclose all payments they make to foreign governments of $100,000 or more.

9/24/12: Tyco International Ltd., the Switzerland-based maker of fire security products, agreed to pay criminal and civil penalties totaling more than $26 million to resolve FCPA charges. Tyco's subsidiary pleaded guilty to paying bribes to officials employed by a Saudi oil and gas company in order to obtain contracts with that company.

Tyco paid $13 million in civil penalties to the SEC, including $10.5 million in disgorgement and $2.5 million in prejudgment interest. It also paid more than $13.6 million in criminal penalties to the DOJ.

9/28/12: The SEC filed a partially-settled civil injunctive action in federal court in Minnesota against Subramanian Krishnan, the former CFO of Digi International, Inc., alleging multiple offenses under the books and records and internal controls provisions of the FCPA.

From 2005 through 2010, the SEC alleged, Krishnan used corporate funds to pay unauthorized travel and entertainment expenses for Digi employees. Digi International hasn't been charged for the violations. Krishnan consented to a final judgment without admitting or denying the allegations. S

SECOND CIRCUIT CLARIFIES "SUBSTANTIAL ASSISTANCE" STANDARD IN SEC AIDING AND ABETTING MATTER

On August 8, 2012, the Second Circuit clarified in *SEC v. Apuzzo,* 2012 WL 3194303, that "substantial assistance" in aider and abettor liability does not require "proximate cause." Instead, the SEC need only to allege and prove that the aider and abettor associated himself with the venture in some way, that he participated in the venture as something that he wished to bring about, and that he sought by his action to make the venture succeed.

Apuzzo arose from a complaint filed by the SEC alleging that Joseph Apuzzo aided and abetted securities law violations through his role in a fraudulent accounting scheme. Apuzzo was the former Chief Financial Officer of Terex Corporation, a company that manufactures equipment primarily for use in construction, infrastructure, and surface mining industries. Specifically, the SEC alleged that Apuzzo was involved in fraudulent sale-lease back transactions designed to allow a different company, United Rentals, Inc. ("URI"), to "recognize revenue prematurely and to inflate the profit generated from URI's sales." Apuzzo's role included executing various agreements that disguised URI's continuing risks and financial obligations, and Apuzzo knew that, if these risks and financial obligations were transparent, URI would be prohibited under GAAP from recording the revenue from the sales. Apuzzo also approved and/or knew that inflated invoices from Terex were designed to conceal URI's indemnification payments to Terex.

To be liable as an aider and abettor in a civil enforcement action, the SEC must prove: "(1) the existence of a securities law violation by the primary (as opposed to the aiding and abetting) party; (2) 'knowledge' of this violation on the part of the aider and abettor; and (3) 'substantial assistance' by the aider and abettor in the achievement of the primary violation." *SEC v. DiBella,* 587 F.3d 553, 566 (2d Cir. 2009) (quoting *Bloor v. Carro, Spanbock, Londin, Rodman & Fass,* 754 F.2d 57, 62 (2d Cir. 1985)).

The district court granted Apuzzo's motion to dismiss the complaint finding that the complaint did not meet the "substantial assistance" element of aiding and abetting liability because it failed to adequately allege that Apuzzo proximately caused the harm on which the primary violation was predicated. The district court held that the SEC's complaint did not plausibly allege such proximate causation.

On appeal, the Second Circuit reversed. Judge Jed Rakoff, who was sitting by designation, disagreed with the district court's finding. He not only found that the SEC met its burden, but he also made clear that "proximate cause" was not an element of aiding and abetting in an SEC civil enforcement action. Specifically, Judge Rakoff found that, in SEC civil enforcement actions, the test for substantial assistance is whether the aider and abettor "in some sort associate[d] himself with the venture, that he participate[d] in it as in something that he wish[ed] to bring about, [and] that he [sought] by his action to make it succeed." *United States v. Peoni,* 100 F. 2d 401, 402 (2d Cir. 1938).

The Court's reasoning centered around the SEC's mandate and purpose, noting that the SEC's "statutory mandate would be undercut if proximate causation were required for aider and abettor liability in SEC enforcement actions." The Court, in recognizing that the purpose of government enforcement actions is deterrence and not compensation, found that requiring proximate cause for aider and abettor liability in civil enforcement actions could release many aider and abettors from liability:

> Indeed, because only the SEC may bring aiding and abetting claims for securities law violations, many if not most aiders and abettors would escape all liability if such a proximate cause requirement were imposed, since, almost by definition, the activities of an aider and abettor are rarely the direct cause of the injury brought about by the fraud, however much they may contribute to the success of the scheme.

Although this case has little impact for private litigants since only the SEC can sue under an aiding and abetting theory, it undercuts an argument some practitioners had made in SEC enforcement actions. S

SEC LOSES LAWSUIT AGAINST EX-CITIGROUP OFFICIAL

Brian Stoker, a former mid-level Citigroup manager, defeated the Securities and Exchange Commission in a civil trial related to Citigroup's sale of risky investments at the peak of the housing boom, dealing yet another blow to the government's efforts to hold Wall Street executives accountable for their role in the financial crisis. The SEC charged Stoker, who worked at Citigroup's mortgage investments desk, as part of a larger lawsuit against the bank. Last year, the SEC and Citigroup agreed to settle for $285 million, but Judge Jed Rakoff rejected the settlement, calling the amount "pocket change" for the bank. (Judge Rakoff's rejection of the Citigroup settlement is currently on appeal before the Second Circuit.) Judge Rakoff also presided over Stoker's two-week trial.

In its case against Stoker, the SEC claimed he acted negligently by helping to create pools of mortgage backed securities, known as collateralized debt obligations ("CDO"). The SEC alleged that Stoker knew or should have known that he was misleading individual investors in a $1 billion CDO, by not disclosing that Citigroup (1) selected the underlying securities and (2) then made a $500 million bet that the same mortgage pool would fail. According to the SEC, that short position gave the bank economic interests adverse to the interests of its investors and ultimately produced substantial profits for Citigroup when the U.S. housing market collapsed. Stoker's defense team characterized their client as a scapegoat for Wall Street wrongdoing. In what some have called the "Where's Waldo?" defense, Stoker's lawyers emphasized that he was a relatively junior executive whose actions were sanctioned by his directors. They urged the jurors to set aside any distaste they might have for the financial industry. "It's not the bank or the transaction that's on trial here," Stoker's attorney said in his closing argument. "It's Brian Stoker."

The jury rejected the SEC's argument, concluding that Stoker was not liable under the securities laws. In an interview following the trial, the jury foreman indicated that the jury had accepted Stoker's "Where's Waldo?" defense. "The SEC tried to focus on a relatively low-level executive who had several layers of managers above him," the foreman said. "[Stoker] did not act in some kind of vacuum where his behavior was not tolerated or encouraged by his bosses. . . . To try to hang all this on Stoker didn't work." But the jury also did not want its verdict to be interpreted as absolution for Citigroup. The jurors issued a separate statement declaring, "This verdict should not deter the SEC from continuing to investigate the financial industry, to review current regulations, and modify existing regulations as necessary." SEC Director of Enforcement Robert Khuzami interpreted the jury's message as a positive sign. "We respect the jury's verdict and will continue to aggressively pursue misconduct arising out of the financial crisis," he said.

At present, however, the SEC's loss in the *Stoker* cases highlights the risks facing the SEC when individuals refuse to settle and instead put the Commission to its burden of proof at trial. Having suffered a high-profile setback in the *Stoker* case, the SEC may think twice about bringing borderline or questionable cases. Defendants may see Stoker's victory over the SEC as a reason to reject unfavorable settlements and roll the dice in litigation. S

$50K
awarded in 2012

GIVEN THE IMPORTANCE OF THE SEC'S NEW WHISTLEBLOWER PROGRAM—THE SEC STAFF REPORTS RECEIVING APPROXIMATELY 8 TIPS PER DAY—SIDLEY WILL BE TRACKING WHISTLEBLOWER AWARDS AND REPORTING AWARD STATISTICS IN EACH ISSUE OF THIS QUARTERLY REVIEW.

FIRST WHISTLEBLOWER AWARD UNDER DODD-FRANK

The Securities and Exchange Commission has announced its first-ever award under its new Whistleblower Program, part of the reforms enacted by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The whistleblower, who helped the SEC stop a multi-million dollar fraud, will receive nearly $50,000 or 30% of the amount collected in the enforcement action, which represents the maximum award available under the program. The whistleblower remains anonymous as the SEC cannot disclose any information that could reasonably be expected to reveal a whistleblower's identify. Notably, the SEC did not disclose substantive details about the underlying fraud, nor did it disclose whether the whistleblower first reported the conduct to the company at the center of the fraud charges. For more information about the SEC's first Whistleblower Program award, please see our **prior update**. S

SEC ENFORCEMENT PRACTICE OF SIDLEY AUSTIN LLP

Sidley's SEC Enforcement Practice, which includes over 60 of our lawyers, defends clients in securities investigations, enforcement actions, and litigation by the SEC, FINRA, state Attorneys General, criminal authorities and other regulators. We offer securities regulatory solutions based on experience, thoughtful risk assessment and close client collaboration, often in a crisis setting. Our clients include domestic and foreign issuers, major financial services conglomerates, broker-dealers, audit committees, accounting firms, investment banks, investment advisers, including hedge fund managers, and self-regulatory organizations, as well as individual directors, officers, and employees. In recent years, we have served as securities enforcement counsel to many of the largest financial services firms, Fortune 500 public companies, and self-regulatory organizations.

Sidley's SEC Enforcement Practice is recognized for its experience, skill, and record of success. The firm was named as "Law Firm of the Year" in 2011 for its Securities Regulation practices (*U.S.News Best Lawyers 2011/2012*). It also has been nationally ranked among U.S. law firms for Securities in *Chambers USA*, which in 2011 noted the firm's "well-regarded enforcement practice with a considerable depth of resources" (*Chambers USA 2011*). *Chambers USA* has also acknowledged Sidley's SEC Enforcement Practice's work on behalf of clients in Asia, noting in 2011 that "[t]he team has expanded its profile in the Asian market in recent years, representing numerous Chinese issuers and acting in cases relating to Japanese business operations" (*Chambers USA 2011*).

For more information, please contact one of the SEC Enforcement Practice's co-chairs:

WASHINGTON, D.C.

Paul V. Gerlach
202.736.8582
pgerlach@sidley.com

NEW YORK

Barry W. Rashkover
212.839.5850
brashkover@sidley.com

LOS ANGELES

Jose F. Sanchez
213.896.6103
jose.sanchez@sidley.com

Sidley Austin LLP, a Delaware limited liability partnership which operates at the firm's offices other than Chicago, New York, Los Angeles, San Francisco, Palo Alto, Dallas, London, Hong Kong, Houston, Singapore and Sydney, is affiliated with other partnerships, including Sidley Austin LLP, an Illinois limited liability partnership (Chicago); Sidley Austin (NY) LLP, a Delaware limited liability partnership (New York); Sidley Austin (CA) LLP, a Delaware limited liability partnership (Los Angeles, San Francisco, Palo Alto); Sidley Austin (TX) LLP, a Delaware limited liability partnership (Dallas, Houston); Sidley Austin LLP, a separate Delaware limited liability partnership (London); Sidley Austin LLP, a separate Delaware limited liability partnership (Singapore); Sidley Austin, a New York general partnership (Hong Kong); Sidley Austin, a Delaware general partnership of registered foreign lawyers restricted to practicing foreign law (Sydney); and Sidley Austin Nishikawa Foreign Law Joint Enterprise (Tokyo). The affiliated partnerships are referred to herein collectively as Sidley Austin, Sidley, or the firm. Attorney Advertising. For purposes of compliance with New York State Bar rules, Sidley Austin LLP's headquarters are 787 Seventh Avenue, New York, NY 10019, 212.839.5300 and One South Dearborn, Chicago, IL 60603, 312.853.7000. Prior results described herein do not guarantee a similar outcome.