

## 1: Broker-Dealer Defense - Markun Zusman Freniere Compton LLP

*Full enforcement statistics for are not yet available, but the largest category of enforcement actions in (the most recent year for which the statistics are available) was enforcement actions against broker-dealers—making up of the total enforcement actions brought by the Commission.*

The District Court dismissed the complaint on the ground that, because respondents themselves had violated the same laws under which recovery was sought by trading on what they believed was inside information, they were in pari delicto with the broker and corporate insider, and thus were barred from recovery. The Court of Appeals reversed. *Perma Life Mufflers, Inc.* Moreover, insiders and broker-dealers who selectively disclose material nonpublic information about the issuer commit a potentially broader range of violations than do tippees who trade on the basis of that information. Absent other culpable actions by a tippee that can fairly be said to outweigh these violations by insiders and broker-dealers, the tippee cannot Page U. First, allowing a defrauded tippee to bring suit against his defrauding tipper promotes the important goal of exposing wrongdoers and rendering them more easily subject to civil, administrative, and criminal penalties. Second, deterrence of insider trading most frequently will be maximized by bringing enforcement pressures to bear on the sources of such information -- corporate insiders and broker-dealers. Third, insiders and broker-dealers will in many circumstances be more responsive to the deterrent pressures of potential sanctions. Finally, there are means other than the in pari delicto defense to deter tippee trading. Although there might well be situations in which the relative culpabilities of tippees and their sources merit a different mix of deterrent incentives, in cases such as the instant one, the public interest will most frequently be advanced if defrauded tippees are permitted to bring suit and to expose illegal practices by corporate insiders and broker-dealers to full public view for appropriate sanctions. The question presented by this case is whether the common law in pari delicto defense bars a private damages action under the federal securities laws against corporate insiders and broker-dealers who fraudulently induce investors to purchase securities by misrepresenting that they are conveying material nonpublic information about the issuer. I The respondent investors filed this action in the United States District Court for the Northern District of California, alleging that they incurred substantial trading losses as a result of a conspiracy between Charles Lazzaro, a registered securities broker employed by the petitioner Bateman Eichler, Hill Richards, Inc. The respondents admitted in their complaint that they purchased TONM stock, much of it through Lazzaro, "on the premise that Lazzaro was privy to certain information not otherwise available to the general public. Their shares initially increased dramatically in price, but ultimately declined to substantially below the purchase price when the joint mining venture fell through. The court reasoned that "trading on insider information is itself a violation of rule 10b-5," and that the allegations in the complaint demonstrated that the respondents themselves had "violated the particular statutory provision under which recovery is sought. Thus, the court concluded, the respondents were in pari delicto with Lazzaro and Neadeau, and absolutely barred from recovery. The Court of Appeals for the Ninth Circuit reversed. Although it Page U. The Court of Appeals noted that this Court had sharply restricted the availability of the in pari delicto defense in antitrust actions, see *Perma Life Mufflers, Inc.* First, the court reasoned that, in cases such as this, defrauded tippees are not in fact "equally responsible" for the violations they allege. Second, the court believed that allowing the defense in these circumstances would be "totally incompatible with the overall aims of the securities law" because the threat of a private damages action is necessary to deter "insider-tipster[s]" from defrauding the public. Finally, the court noted the availability of means other than an outright preclusion of suit to deter tippees from trading on inside information. The lower courts have divided over the proper scope of the in pari delicto defense in securities litigation. Story, *Equity Jurisprudence* 13th ed. Thus there might be an "inequality of condition" between the parties, *id.* In addition, the public policy considerations that undergirded the in pari delicto defense were frequently construed as precluding the defense even where the plaintiff bore substantial fault for his injury: Notwithstanding these traditional limitations, many courts have given the in pari delicto defense a broad application to bar actions where plaintiffs simply have been involved generally in "the same sort of wrongdoing" as defendants. That

case involved a treble-damages action against a Midas Muffler franchisor by several of its dealers, who alleged that the franchise agreement created a conspiracy to restrain trade in violation Page U. In reversing that determination, the opinion for this Court emphasized that there was no indication that Congress had intended to incorporate the defense into the antitrust laws, which "are best served by insuring that the private action will be an ever-present threat to deter anyone contemplating [illegal] business behavior. Accordingly, the opinion concluded that "the doctrine of in pari delicto, with its complex scope, contents, and effects, is not to be recognized as a defense to an antitrust action. In separate opinions, five Justices agreed that the concept of "equal fault" should be narrowly defined in litigation arising under federal regulatory statutes. The five Justices concluded, however, that where a plaintiff truly bore at least substantially equal responsibility for the violation, a defense Page U. Brief for Petitioner Bateman Eichler buttresses this argument by observing that, unlike the Sherman and Clayton Acts, the securities laws contain savings provisions directing that "[t]he rights and remedies provided by [those laws] shall be in addition to any and all other rights and remedies that may exist at law or in equity [ Footnote 19 ]" -- again, apparently, supporting a broader scope for fault-based defenses than recognized in Perma Life. Nothing in Perma Life suggested that public policy implications should govern only where Congress expressly provides for private remedies; the classic formulation of the in pari delicto doctrine itself required a careful consideration of such implications before allowing the defense. See supra at U. Moreover, we repeatedly have emphasized that implied private actions provide "a most effective weapon in the enforcement" of the securities laws, and are "a necessary supplement to Commission action. Manor Drug Stores, U. In addition, we have eschewed rigid common law barriers in construing the securities laws. First, whereas many antitrust plaintiffs participate in illegal restraints of trade only "passively" or as the result of economic coercion, as was the case in Perma Life, the ordinary tippee acts voluntarily in choosing to trade on inside information. We disagree, however, that an investor who engages in such trading is necessarily as blameworthy as a corporate insider or broker-dealer who discloses the information for personal gain. United States, U. That duty typically is "derivative from. SEC, supra, at U. United States, supra, at U. A tippee trading on inside information will in many circumstances be guilty of fraud against individual shareholders, a violation for which the tipper shares responsibility. But the insider, in disclosing such information, also frequently breaches fiduciary duties toward the issuer itself. Such conduct is particularly egregious when committed by a securities professional, who owes a duty of honesty and fair dealing toward his clients. Absent other culpable actions by a tippee that can fairly be said to outweigh these violations by insiders and broker-dealers, we do not believe that the tippee properly can be characterized as being of substantially equal culpability as his tippers. There is certainly no basis for concluding at this stage of this litigation that the respondents were in pari delicto with Lazzaro and Neadeau. The allegations are that Lazzaro and Neadeau masterminded this scheme to manipulate the market in TONM securities for their own personal benefit, and that they used the purchasing respondents as unwitting dupes to inflate the price of TONM stock. The respondents may well have violated the securities laws, and in any event we place no "stamp of approval" on their conduct. Capital Gains Research Bureau, Inc. Although a number of lower courts have reasoned that a broad rule of caveat tippee would better serve this goal, [ Footnote 26 ] we believe the contrary position adopted by other courts represents the better view. Thus it is particularly important to permit Page U. The in pari delicto defense, by denying any incentive to a defrauded tippee to bring suit against his defrauding tipper, would significantly undermine this important goal. Weis, Page U. In addition, corporate insiders and broker-dealers will in many circumstances be more responsive to the deterrent pressure of potential sanctions; they are more likely than ordinary investors to be advised by counsel, and thereby to be informed fully of the "allowable limits on their conduct. We believe the "enforceable warranty" theory is overstated, and overlooks significant factors that serve to deter tippee trading irrespective of whether the in pari delicto defense is allowed. First, tippees who bring suit in an attempt to cash in on their "enforceable warranties" expose themselves to the threat of substantial civil and criminal penalties for their own potentially illegal conduct. Only in the situation where the investor has been deliberately defrauded will he be able to maintain a private suit in an attempt to recoup his money. As the Ninth Circuit emphasized in this case, there is no warrant to giving corporate insiders and broker-dealers "a license to defraud the investing public with little fear of

prosecution. The investors charged that Neadeau and TONM had "directly and indirectly participated with, aided and abetted, and conspired with" Lazzaro in the scheme. The areas in which TONM had been engaged in exploration "were historically mined by Surinamese natives using primitive methods," and were accessible to the outside world "primarily by motorized canoes and helicopter.

### 2: Oversight | [www.enganchecubano.com](http://www.enganchecubano.com)

*Beyond initial registration requirements, FINRA's enforcement action against Timothy Ayre evidences that persons operating as SEC-registered broker-dealers and FINRA members remain subject to all substantive regulatory requirements, even when engaging in digital asset markets.*

Please leave this field empty. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to Primerus or its member law firms until an attorney-client relationship has been established. Thank you and we look forward to serving you. Haddonfield, New Jersey I. At common law both agents and brokers, when acting on behalf of an insured, owe the insured a duty of due care. New Jersey is one of several jurisdictions explicitly recognizing agents and brokers as professionals. Proving Causation In the area of agent and broker malpractice, the method by which a plaintiff must establish a claim against an insurance producer turns on the element of causation. In other jurisdictions, there is support for the view that to successfully maintain a negligence action against an insurance broker, the policyholder must prove by a preponderance of the evidence that the requested coverage was then generally available in the insurance marketplace. If an agent is negligent while acting within the scope of his agency relationship with the insurance carrier, his negligence may bind coverage on behalf of the insurance carrier. Defenses There are several defenses available to agents and brokers who are subject to a professional malpractice action in New Jersey. Failure to file the action within the applicable statute of limitations will result in dismissal of the action. Under New Jersey law, negligence actions against agents and brokers are subject to a six year statute of limitations. In these circumstances, the discovery rule could protect a plaintiff from losing his or her right to sue a broker if the underlying litigation lasts a long time. Plaintiffs are also required to file an Affidavit of Merit. The New Jersey Affidavit of Merit statute [20] specifically prescribes that: In any action for damages for personal injuries, wrongful death or property damage resulting from an alleged act of malpractice or negligence by a licensed person in his profession or occupation, the plaintiff shall, within 60 days following the date of filing of the answer to the complaint by the defendant, provide each defendant with an affidavit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards or treatment practices. The court may grant no more than one additional period, not to exceed 60 days, to file the affidavit pursuant to this section, upon a finding of good cause. Pennsylvania courts have expressed support for the view that to successfully maintain a negligence action against an insurance broker, the policyholder must prove by a preponderance of the evidence that the requested coverage was then generally available in the insurance marketplace. In Pennsylvania, the applicable statute of limitation for a claim of negligence against an insurance agent or broker is two years. Rather, the doctrine of contributory negligence, which operates to completely bar the plaintiff from recovery if his negligence contributed to the result, applies in these cases. This newsletter should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult a lawyer concerning your own situation with any specific legal question you may have.

## 3: FINRA Examinations, Investigations & Disciplinary Actions | FINRA Defense Lawyers

*Damages in Actions Against Broker-Dealers. Defenses in Actions Against Broker-Dealers I consent to the collection of my personal information by Wolters Kluwer.*

March 1, By Denis C. FINRA defines customers as those who have an account or purchase securities through the broker-dealer. New guidance may allow broker-dealers to litigate certain selling away claims in court. In the first years of the twenty-first century, a number of broker-dealers attempted to obtain court orders under which they would be permitted to litigate selling away claims brought by non-customers in court versus arbitration. However, a number of courts ruled against the broker-dealers in this regard. First, the claim must involve a dispute between either a NASD-member and a customer or an associated person and a customer. Second, the dispute must arise in connection with the activities of the member or in connection with the business activities of the associated person. Even where the claimant had no contact with the broker-dealer, the courts typically found that the claimant was a "customer" of the associated person where the claimant had purchased some type of investment recommended by the associated person, even if it had not been approved by or offered through the broker-dealer. *John Hancock Life Insurance Co. See also, Vestax Securities Corporation v. The courts also determined that the claims arose in connection with the activity of the NASD member or in connection with the business of the associated person under Rule The relevant activities of the NASD member would encompass the duty to properly supervise the activities of its registered representatives. The court determined that since both prongs of the rule had been satisfied, such claims must be arbitrated. In fact, the guidance found in the answer to Question 6 specifically addresses the definition of a customer for the purposes of the Suitability Rule. The guidance provides as follows: What constitutes a "customer" for purposes of the Suitability Rule? Therefore, FINRA has specifically stated that a customer is a person who opens a brokerage account at a broker-dealer or purchases a security for which the broker-dealer received or will receive compensation directly or indirectly. This guidance may have direct applicability to whether or not a certain selling away case may be litigated in court. For example, in certain selling away cases, a broker-dealer registered representative may recommend an investment to an individual who would not meet the above-referenced definition of a customer to the extent that they do not have an account at the broker-dealer and the security recommended was not offered or approved by the firm. According to the above-referenced guidance, it could be argued that such an individual would not be a "customer" of the registered representative. If a broker-dealer were to be faced with a selling away claim by a non-customer and raised this particular issue with the court, a court could well find that, under the above-referenced guidance, such individuals are not customers of the registered representative and, therefore, the firm would not be obligated to arbitrate these claims, but could litigate them in court. There is a significant potential advantage to litigating this matter in court were there to be a preliminary finding that the claimant was not a "customer" of the broker-dealer. A court applying the law might actually rule that a firm has no duty to non-customers. He can be reached at*

## 4: Bateman Eichler v. Berner :: U.S. () :: Justia US Supreme Court Center

*SEC enforcement actions against broker-dealers were up 20% in the first half of the government's fiscal year, and now account for a quarter of all enforcement actions by the agency, according to a.*

## 5: Defense | Definition of Defense by Merriam-Webster

*[A] Broker-Dealer's Discretionary Authority Over the Account [B] Broker-Dealer's Exercise of Control Over the Account [C] Broker-Dealer's Role as an Adviser [D]?Sophistication? of the Customer [E] Customer's Trust and Confidence in the Broker-Dealer [F] Complexity and Riskiness of the Securities Traded [G] Customer's Reliance on a Third-Party.*

## DEFENSES IN ACTIONS AGAINST BROKER-DEALERS pdf

### 6: Table of contents for Broker-dealer law and regulation

*It can be difficult to register broker-dealers and individual representatives when those companies and individuals have experienced past customer complaints, disciplinary actions, bankruptcies and other black marks on their record.*

### 7: Broker-Dealer Law and Regulation, Fourth Edition | Wolters Kluwer Legal & Regulatory

*Affirmative Defenses to Securities Exchange Act activities of broker-dealers. The Validity of Common Law Defenses to Private Actions Under the Securities.*

### 8: Best Lawyers for Litigation - Securities in Albuquerque, New Mexico | Best Lawyers

*The broker-dealers took exception to these non-customers' claims and filed actions in court in an effort to have the arbitrations stricken. However, a number of courts ruled against the broker-dealers in this regard.*

*The feasibility of plantation silviculture using poplar on agricultural lands of western and central Albe A short account of the life and death of Nathanael Othen 2002 ford expedition manual Sociology of the African family HVACR Service Calls Video Series Tape 7 Ember js web development with ember cli Ch. 2. The art of Zion : a historical overview by Deborah Reeder Awwa Annual Conference Proceedings, Cincinnati, Oh, 1990 (Annual Conference Proceedings) A Manual Of Pharmacology And Therapeutics Major reality shows Another balancing equations sheet Imported law : between natural law and globalisation Nick and the Mango-Eating Piglet Pick a card, any card Longman ielts practice tests plus 2 Ralph sarchie beware the night The Minnesota Legislature of 1911 Qualitative theory of ordinary differential equations Crumbled tumbled humbled saved Using social theory in educational research Graphic design school fourth edition Hon. Daniel Barnard Understanding Sacramental Healing (Anointing and Viaticum) Choice theory Hungry for health Hvac duct systems inspection guide The metrical theory of Jacobi-Perron algorithm. Intensive post-release supervision of delinquents William Dunlap And The Construction Of An American Art History Account of a society at Harmony, (twenty five miles from Pittsburg), Pennsylvania, United States of Ameri 2nd puc model question papers pcmb with answers 2018 Htc one v user guide Patience piano sheet music Believing you can . . . because god says you can 2004 toyota 4runner service manual Financial markets books for beginners A guide for implementing accreditation standard 404.2, materials selection policy Consent and documentation Tim Nutbeam The hostiles were apparently everywhere Part 3 : Israel in the Writings.*