



DOUMAR LAW GROUP NEWSLETTER

A Periodic Publication Covering Legal Issues of General Interest

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10b-5 Securities Liability

Our office has grappled in different contexts with liability for securities fraud. Having beaten back various other securities claims in an interrelated series of matters, we have faced regulators who have turned to Rule 10b-5 to stave off total dismissal. Under the first and third prongs of Rule 10b-5, a fraudulent act in connection with the sale of securities, all of which can be broadly interpreted by regulatory authorities, can expose a company officer to claims of securities fraud. Even if securities are those of an unregistered hedge fund, 10b-5 liabilities may still apply to purportedly fraudulent acts. The second prong of Rule 10b-5, relating to misrepresentations, has been more narrowly defined in a so-called bright-line test, to be limited to those persons who make, or at most are deemed to make, a misrepresentation.

ERISA Discovery

The broad scope of ERISA preemption has led some courts to deny discovery even when such cases are litigated in federal court on appeal. Judge Kollar-Kotelly of the federal

district court in Washington granted our motion to compel discovery on behalf of a client bringing ERISA in *Hurley v. Life Insurance Company of North America* (2006 WL 1883406, D.D.C., July 09, 2006). Discovery requests must be narrowly focused on the dispute, and on the decisionmaking process of an insurer, to maximize the chance for discovery.

Courtroom Etiquette

Never, ever become upset or laugh at an adversary's testimony or arguments in court. What is obviously absurd to one person may not be to a judge, who wants to give every side equal respect as part of the process and sift through testimony on his own. Always maintain composure and humility, which will go a long way to establishing credibility with judges and juries. Recently, a firm client maintained his composure when our adversary appeared to be lying outrageously at trial in a way that was impossible to disprove. Calm, understated testimony from our side carried the day and the verdict, without name-calling or obvious reactions.