

Main Street Takes On Wall Street's Untouchables - The Lawyers & Accountants. A brief discussion of third party liability for aiding and abetting. Blog by Brian Mahany

By now, few are shocked when the nightly news breaks a story of a new Ponzi scheme. Not a week goes by without new tales of corporate greed or insider trading. The feds do a fair job in prosecuting these frauds, at least in the high profile cases. But what does a 20 year prison sentence do for victims? Beyond some sense of satisfaction, not much. Prison sentences may bring closure to victims but restitution is necessary for true justice to occur.

Suing a fraudster is relatively easy. But collecting is often very difficult. Increasingly, savvy victims and their lawyers are looking to the fraudster's accountants and bankers for redress. In 2008, however, the U.S. Supreme Court threw a wrench into these third party collection efforts. Congress, however, does not appear pleased.

Earlier this year, Arlen Specter introduced Senate Bill 1551 (the "Liability for Aiding and Abetting Securities Act of 2009") hoping to reinstate liability against bankers, lawyers and accountants who help corporate executives commit securities frauds.

Said Senator Specter on the floor of the Senate:

"The massive frauds involving Enron, Refco, Tyco, Worldcom, and countless other lesser-known companies during the last decade have taught us that a stock issuer's auditors, bankers, business affiliates, and lawyers--sometimes called 'secondary actors'--all too often actively participate in and enable the issuer's fraud."

Addressing the government's inability to adequately protect victims, Specter added, "Enforcement actions by the SEC have proved to be no substitute for suits by private plaintiffs. The SEC's litigating resources are too limited for the SEC to bring suit except in a small number of cases, and even when the SEC does bring suit, it cannot recover damages for the victims of fraud."

Polling data shows the legislation is heavily favored by the public. Political insiders are divided. Some think Congress should act to deter future misconduct and insure victims are properly compensated. Others testified that the bill will only rope in more deep pocket defendants, make more money for lawyers, increase costs and have little deterrence.

Whether or not Specter's bill passes, accountants and other financial professionals find themselves under increasing scrutiny as victims scramble to be made whole. Specter's bill only applies to securities violations under a specific federal law. The theory of aiding and abetting liability has been around for centuries, however.

The rights of victims to seek redress from third parties that breach a duty of professional conduct and give substantial assistance or encourage the bad

conduct of another, goes back to at least 1736 in the English common law. With a proper litigation strategy, it is possible to hold these third parties responsible for the losses of the fraudsters.

Victims demand no less.

Will expansion of theories of liability hurt accountants and lawyers? It is too early to tell. But bad lawyers and accountants certainly have more to fear.

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MahanyLaw is innovative in its approach to asset and fraud recovery. While many lawyers stop with the the award of a judgment, at MahanyLaw we are not satisfied until our clients victims are made whole. We are not afraid of suing investment bankers, lawyers and accountants if their negligence or indifference can be linked to the loss.

Founder Brian Mahany has 26 years experience assisting victims of fraud. As a prosecutor, assistant attorney general, white collar crime government agent and as a practicing lawyer for over a quarter century, Brian has unique qualifications and experience. Experience that can mean the difference between collecting restitution versus simply having an uncollectible judgment.

From our offices in Milwaukee, California and Portland, we help victims anywhere in the United States. We are also proud sponsors of the upcoming 2010 Offshore Alert Financial Due Diligence Conference in Miami, Florida and a member of the International Association for Asset Recovery.

Call Brian Mahany directly at 414.704.6731 or through the mahanylaw.com website.