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Recent Cases

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RECENT CASES

Securities Regulation — Securities Fraud — Accountants and Accounting — An Independent Public Aceounting Firm is Liable to Injured Investors for Aiding and Abetting a Violation of Rule 10b-5 if it is Negligent in Performing an Audit Pursuant to Section 17(a) of the Securities Exchange Act of 1934.

I. Facts and Holding

Plaintiffs, investors in securities, brought suit for damages, alleging that defendant Ernst and Ernst, an independent public accounting firm, had negligently performed an audit, which violated both its common-law duty and its statutory duties pursuant to section 17(a) of the Securities Exchange Act of 1934[1] (1934 Act) and Rule 17a-5[2] promulgated thereunder. Plaintiffs had invested in a

1. Section 17(a) of the Securities Exchange Act [hereinafter cited as the 1934 Act], 15 U.S.C. § 78q(a) (1970), provides:

(a) Every national securities exchange, every member thereof, every broker or dealer who transacts a business in securities through the medium of any such member, every registered securities association, and every broker or dealer registered pursuant to section 78o of this title, shall make, keep, and preserve for such periods, such accounts, correspondence, memoranda, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memoranda, papers, books, and other such records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

2. Rule 17a-5, 17 C.F.R. § 240.17a-5 (1974), passed pursuant to section 17(a) of the 1934 Act, in pertinent part provides:

(a) *Filing reports.*

. . . .

(2) Every member, broker or dealer subject to this rule shall file reports of financial condition containing the information required by Form X-17A-5 . . . .

. . . .

(b) *Nature and form of reports* . . . .

(1) The report of a member, broker or dealer shall be certified by a certified public accountant or a public accountant who shall in fact be independent

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(g) *Accountant's certificate*

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(2) *Representations as to audit.* The accountant's certificate (i) shall contain

spurious escrow account on the advice of Lestor Nay, President of First Securities Company of Chicago,[3] whose fraud on plaintiffs was facilitated by the use of a "mail rule" by which no employee was permitted to open any mail addressed to Nay or marked for his attention, regardless of the duration of Nay's absence from the office.[4] To comply with the reporting requirements of section 17(a), defendant was hired by First Securities to audit and certify the financial reports it was required to file with the Securities and Exchange Commission (SEC) under Rule 17a-5 in accordance with the guidelines established by SEC Form X-17A-5.[5] Plaintiffs claimed that defendant's negligent failure to discover or disclose the mail rule was a failure to comply with generally accepted auditing standards, which caused their injury, giving rise to both a common-law action for negligent misrepresentation and a statutory cause of action for aiding and abetting a violation of section 10(b) of the 1934

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a reasonably comprehensive statement as to the scope of the audit made, including a statement as to whether the accountant reviewed the procedures followed for safeguarding the securities of customers, and including, if with respect to significant items in the report covered by the certificate any auditing procedures generally recognized as normal have heen omitted, a specific designation of such procedures and of reasons for their omission, (ii) shall state whether the audit was made in accordance with generally accepted auditing standards applicahle in the circumstances; and (iii) shall state whether the audit made omitted any procedure deemed necessary by the accountant under the circumstances of the particular case.

. . . .

(h) *Accountant's certificate; options to be expressed.* The accountant's certificate shall state clearly the opinion of the accountant with respect to the financial statement covered by the certificate and the accounting principles and practices reflected therein.

. . . .

3. Plaintiffs had invested approximately $972,500 in the escrow account hetween 1942 and 1966. The fraud was not discovered until 1968 when Nay confessed in a suicide note. In SEC v. First Securities Co. of Chicago, 463 F.2d 981, 986 (7th Cir. 1972) the court held that Nay's conduct violated section 10(b) of the 1934 Act and Rule 10b-5.

4. None of the payments to the spurious account were reflected on the financial records of First Securities as all the payments were made payable to Nay or to a bank for his account. Nay paid the "interest" by personal checks.

5. The introduction to SEC Form X-17A-5, for 1967, states in part:

The audit shall be made in accordance with generally accepted auditing standards and shall include a review of the accounting system, the internal accounting control and procedures for safeguarding securities including appropriate tests thereof for the period since the prior examination date. It shall include all procedures necessary under the circumstances to substantiate the assets and liabilities and securities and commodities positions as of the date of the responses to the financial questionnaire and to permit the expression of an opinion by the independent public accountant as to the financial condition of the respondent at that date. . . .

Since 1967 the introductory paragraph has been amended, increasing the scope of the audit, but the language quoted above has been retained. *See* CCH FED. SEC. L. REP. ¶ 33,938 at 22,813-14 (1974).

Act[6] and Rule 10b-5[7] thereunder.[8] Defendant contended, *inter alia*,[9] that it owed no common-law duty to plaintiffs and that it could not have aided or abetted Nay's 10b-5 violation because it had no knowledge of the fraudulent escrow scheme and no causal connection existed between its conduct and plaintiffs' injury. Finding no genuine issue of material fact, the district court granted defendant's motion for summary judgment. On appeal to the United States Court of Appeals for the Seventh Circuit, *held*, reversed and remanded. An independent public accountant is liable for aiding and abetting a violation of section 10(b) of the 1934 Act and Rule 10b-5 when his negligent breach of the duty of inquiry and disclosure implicit in section 17(a) and Rule 17a-5 facilitates an underlying fraud *Hochfelder v. Ernst & Ernst*, 503 F.2d 1100 (7th Cir. 1974).

II. BACKGROUND

Section 17(a) of the Securities Exchange Act of 1934[10] requires that broker-dealers make reports of their financial condition to the SEC. Rule 17a-5,[11] implementing section 17(a), further requires that these reports be audited in accordance with generally accepted au-

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6. Section 10 of the 1934 Act, 15 U.S.C. § 78j (1970), provides in part:

> It shall he unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange —
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> . . . .
>
> (h) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

7. Rule 10b-5, 17 C.F.R. § 240.10b-5 (1974), passed pursuant to section 10(b) of the 1934 Act, provides in pertinent part:

> It shall be unlawful for any person . . . .
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> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances nnder which they were made, not misleading, or
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> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
>
> in connection with the purchase or sale of any security.

8. Plaintiffs also asserted that defendant had a duty to detect and report First Securities' noncompliance with Rule 27(c) of the National Association of Securities Dealers, Inc. *See* note 48 *infra*.

9. Defendant also contended that plaintiffs were estopped by their conduct prior to the lawsuit and that the action was barred by the applicable statute of limitations. *See* note 49 *infra*.

10. *See* note 1 *supra*.

11. *See* note 2 *supra*.

diting standards and be certified by an independent public accountant. SEC Form X-17A-5,[12] which provides a more detailed explanation of Rule 17a-5 requirements, states that the audit must include a review of the system of internal accounting controls. This requirement was expanded by SEC Release No. 8172,[13] which requires that the auditor also comment on any material inadequacy found therein.[14] Although no duty owed by accountants to the investing public had ever been implied under section 17(a),[15] such a duty exists at common law and under other provisions of the federal securities laws.

In the leading case establishing common-law limits of accountant's liability to third parties, *Ultramares Corp. v. Touche, Niven & Co.*,[16] Chief Judge Cardozo opined that to allow recovery for mere negligence would place too great a burden on the accounting profession, and required a showing of intentional misconduct. Although this requirement was not disturbed for many years,[17] the position adopted by the *Restatement (Second) of Torts*[18] and the

12. *See* note 5 *supra*.

13. SEC Release No. 8172, [1966-1967 Transfer Binder] CCH FED. SEC L. REP. ¶ 77,475, at 82,947, states: "The Audit Requirements have been expanded to require the independent public accountant to comment on any material inadequacies found to exist in the accounting systems, the internal accounting control, and procedures for safekeeping securities and to report on any corrective action taken or proposed."

14. According to the American Institute of Certified Public Accountants, a material inadequacy in the internal accounting controls can be defined as "a condition that would permit a person acting individually in the brokerage concern's organization to perpetrate errors or irregularities involving the accounting records, assets of the brokerage concern, and/or assets of customers that would not be detected through the internal control procedures in time to prevent material loss . . . ." AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, AUDITS OF BROKERS AND DEALERS IN SECUTIRIES 71 (1963).

15. In Rippey v. Denver United States Nat'l Bank, 260 F. Supp. 704 (D. Colo. 1966), the court held that § 17 provided no remedy for alleged violation of the Act. In SEC enforcement actions, however, courts have found a limited remedy created by this section. *E.g.*, Stead v. SEC, 444 F.2d 713 (10th Cir. 1971); Boruski v. SEC, 340 F.2d 991 (2d Cir. 1965).

16. 255 N.Y. 170, 174 N.E. 441 (1931).

17. *See, e.g.*, C.I.T. Financial Corp. v. Glover, 224 F.2d 44 (2d Cir. 1955); O'Connor v. Ludlam, 92 F.2d 50 (2d Cir. 1937); Investment Corp. v. Buchman, 208 So.2d 291 (Fla. Dist. Ct. App. 1968); State Street Trust Co. v. Ernst, 278 N.Y. 104, 15 N.E.2d 416 (1938); Duro Sportswear, Inc. v. Cogen, 131 N.Y.S.2d 20 (S. Ct. 1954).

18. RESTATEMENT (SECOND) OF TORTS § 552 (Tent. Draft No. 12, 1966), in part provides:
Information Negligently Supplied for the Guidance of Others.
(1) One who, in the course of his business, profession or employment, or in a transaction in which he has pecuniary interest, supplies false information for the guidance of others in their business transactions is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.
(2) Except as stated in subsection (3), the liability stated in subsection (1) is limited to loss suffered
(a) By the person or one of the persons for whose benefit and guidance he

current trend would allow nonprivy plaintiffs to recover for damage caused by a defendant's negligence upon a showing of reliance and membership in a class whose reliance was foreseen.[19]

The federal securities laws provide liability for accountants' misrepresentations in both section 11 of the Securities Act of 1933[20] and section 18 of the 1934 Act.[21] When a plaintiff is not in privity, however, the violation usually takes the form of aiding and abetting a violation of section 10(b) and Rule 10b-5,[22] under which the courts have implied a private civil action for damages against any person who participates in acts of fraud or makes a false or misleading statement by omitting a material fact in connection with securities transactions.[23] In an early case dealing with aiding and abetting a violation of Rule 10b-5, *Pettit v. American Stock Exchange*,[24] the court refused to dismiss a claim against a nonprivy defendant, stating that "knowing assistance of . . . a fraudulent scheme under Section 10(b) gives rise to liability equal to that of the perpetrators themselves . . . ."[25] In *Brennan v. Midwestern United Life Insurance Co.*,[26] the court relied on *Pettit* and adopted the accepted tort standard for aiding and abetting, holding that one is liable to a third party for harm done by another if he "knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so conduct himself."[27] Although in

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intends to supply the information, or knows that the recipient intends to supply it; and

(b) Through reliance upon it in a transaction which he intends the information to influence, or knows that the recipient so intends, or in a substantially similar transaction.

19. Hochfelder v. Ernst & Ernst, 503 F.2d 1100 (7th Cir. 1974). *See, e.g.*, Rhode Island Hospital Trust Nat'l Bank v. Swartz, 455 F.2d 847 (4th Cir. 1972); Rusch Factors, Inc. v. Levin, 284 F. Supp. 85 (D.R.I. 1968); Shatterproof Glass Corp. v. James, 466 S.W.2d 873 (Tex. Civ. App. 1971).

20. Section 11 of the Securities Act, 15 U.S.C. § 77a (1970), creates liability for false or deceptive statements in a registration statement, and accountants as experts may be included in its provisions. *See* Escott v. BarChris Construction Co., 283 F. Supp. 643 (S.D.N.Y. 1968).

21. Section 18 of the Securities Exchange Act, 15 U.S.C. § 78r (1970), imposes liability on any person who makes misleading statements in documents filed with the SEC. Since reliance must be shown and since plaintiffs rarely see these documents, it is usually impossible to establish a cause of action under § 18. *See, e.g.*, Clement A. Evans & Co. v. McAlpine, 434 F.2d 100 (5th Cir. 1970); Heit v. Weitzen, 402 F.2d 909 (2d Cir. 1968).

22. *See generally* Bromberg, *Are There Limits to Rule 10b-5?*, 29 BUS. LAW. 167,168 (1974).

23. *E.g.*, Superintendent of Ins. v. Bankers Life & Cas. Co., 404 U.S. 6 (1971); Kardon v. National Gypsum Co., 73 F. Supp. 798 (E.D. Pa. 1947).

24. 217 F. Supp. 21 (S.D.N.Y. 1963).

25. *Id.* at 28.

26. 259 F. Supp. 673 (N.D. Ind. 1966) (motion to dismiss denied), 286 F. Supp. 702 (N.D. Ind. 1968) (on merits), *aff'd*, 417 F.2d 147 (7th Cir. 1969), *cert. denied*, 397 U.S. 989 (1970).

27. 259 F. Supp. at 680; RESTATEMENT OF TORTS § 876(b) (1939).

Brennan the defendant had actual knowledge and gave positive assistance,[28] the court noted that inaction might constitute substantial assistance,[29] and on appeal the Ninth Circuit indicated that knowledge might be established by inference.[30] In defining the limits of aiding and abetting a violation of Rule 10b-5, the courts since *Brennan* generally have focused their attention on the elements of knowledge and substantial assistance.[31]

As actual knowledge has been alleged in most securities law cases of aiding and abetting, few courts have found it necessary to comment at length upon the degree of knowledge required.[32] In the few cases that have dealt with the issue, however, an erosion of the actual knowledge requirement has occurred. In two actions brought by the SEC, the Second[33] and Sixth Circuits[34] have indicated that less than actual knowledge is sufficient. In *SEC v. First Securities Company*,[35] the Seventh Circuit also stated that liability could arise when less than actual knowledge was present[36] — a position that the court repeated in *Hochfelder v. Midwest Stock Exchange*.[37] In the latter case, defendant Midwest was found to have fulfilled its duty of inquiry implicit in section 6 of the 1934 Act,[38] but the court went on to state that an action for aiding and abetting can be sustained if the defendant knew or, but for a breach of a duty of inquiry, should have known of the fraud.

The *Brennan* requirement of substantial assistance also has been eroded over the years. The Ninth Circuit in *Wessel v. Buhler*[39]

28. At trial it was disclosed that officers of the corporate defendant knew that a registered securities broker was dealing fraudulently with money obtained from his customers for purchase of defendant's stock, hut nevertheless referred inquiring customers of the broker first to the broker rather than to the state's securities commission. 286 F. Supp. 702 (N.D. Ind. 1968).

29. 259 F. Supp. at 682.

30. 417 F.2d at 149.

31. *See generally* Ruder, *Aiding and Abetting*, 7 REV. SEC. REG. 882 (1974).

32. For a list of aiding and abetting cases in which actual knowledge was present see Ruder, *Multiple Defendants in Securities Law Fraud Cases: Aiding and Abetting, Conspiracy, In Pari Delicto, Indemnification, and Contribution*, 120 U. PA. L. REV. 597, at 632 n.155 (1972).

33. SEC v. Spectrum Ltd., 489 F.2d 535 (2d Cir. 1973) (in an enforcement proceeding an attorney who negligently prepared an opinion letter was found guilty of aiding and abetting a violation of Rule 10b-5).

34. SEC v. Coffey, 493 F.2d 1304 (6th Cir. 1974) (although in this case the court found no duty of inquiry it indicated breach of duty of inquiry would give rise to liability).

35. 463 F.2d 981 (7th Cir. 1972).

36. *Id.* at 987.

37. 503 F.2d 364 (7th Cir. 1974).

38. Section 6 of the 1934 Act, 15 U.S.C. § 78f (1971), provides that an exchange may register with the SEC by filing certain statements containing agreements to enforce certain rules and regulations.

39. 437 F.2d 279 (9th Cir. 1971).

held that mere inaction would not constitute substantial assistance, but restricted the definition of inaction by distinguishing between a lack of action and an omission occurring as part of an affirmative statement.[40] In *Landy v. Federal Deposit Insurance Company*,[41] in which the shareholders of a bank sued an accountant for his failure to discover fraud in preparing certified financial statements for the bank's board of directors, the Third Circuit relied upon *Wessel* and held that while mere inaction would not constitute substantial assistance, if a "special relationship" existed between the parties mere inaction would suffice. Although the Seventh Circuit has not given a definitive ruling on the question, in *Drake v. Thor Power Tool Co.*[42] it did recognize a special relationship of the type suggested in *Landy* — the relationship that exists between investors and independent public auditors.[43] The erosion that has taken place since *Brennan* has led one commentator to define the elements of aiding and abetting a violation of Rule 10b-5 as a breach of duty of inquiry and breach of duty of disclosure, requiring neither actual knowledge nor substantial assistance.[44]

The final element of aiding and abetting about which the circuit courts have disagreed is whether plaintiff must show that he relied on defendant's work or whether a showing that defendant's negligence was causally connected with his injuries will suffice.[45] The Third Circuit in *Landy* apparently required reliance, having stressed that none of the plaintiffs saw defendant's misleading report.[46] Although the status of reliance in the Seventh Circuit is unclear, the court noted in *Drake* that accountants should not be immunized from liability under Rule 10b-5 since the accountants' activities pursuant to the 1934 Act are designed to protect investors.[47] Prior to the instant decision no court had clearly defined the elements required for aiding and abetting a violation of Rule 10b-5, nor had any court allowed recovery under the common law for negligent misrepresentation absent a showing of reliance on the accountant's statement by a plaintiff.

40. *Id.* at 283.
41. 486 F.2d 139 (3d Cir. 1973).
42. 282 F. Supp. 94 (N.D. Ill. 1967).
43. *Id.* at 104.
44. Ruder, *supra* note 31, at 885.
45. For a discussion of reliance as an element of a Rule 10b-5 violation see Stoll, *Reliance as an Element in 10b-5 Actions*, 53 ORE. L. REV. 169 (1974).
46. 486 F.2d at 170.
47. 282 F. Supp. at 104.

III. The Instant Opinion

After initially rejecting plaintiffs' common-law claim because neither foreseeability nor reliance could be established, the instant court focused its attention on the statutory cause of action and stated that to maintain an action for aiding and abetting a Rule 10b-5 violation, plaintiffs must show first, that defendant had a duty of inquiry, secondly that plaintiffs were beneficiaries of that duty, thirdly that concomitant with the duty of inquiry was a duty to disclose, fourthly that defendant breached these duties, and lastly that defendant's breaches were causally connected with the facilitation of the underlying violation of Rule 10b-5. As to the first element, the court said that a statutory duty of inquiry was imposed on defendant when it agreed to audit First Securities' financial records and prepare Form X-17A-5. Reasoning that the entire thrust of the Act was the protection of investors, the court found that this duty inured to the benefit of investors such as the plaintiffs. The court next concluded that Rule 17a-5 contained the requisite duty of disclosure and that although this duty was only implicit in Rule 17a-5 and Form X-17A-5, it was made express by SEC Release No. 8172. Since defendant certified the financial statement without mentioning any material inadequacy, the court stated that any breach of defendant's duty of inquiry would necessitate a finding that defendant also breached this duty of disclosure. The court next addressed itself to the determination of the standard of care applicable in deciding whether defendant had breached its statutory duty of inquiry. Reasoning that in performing an audit, an accountant is "required to meet only the standard of care reasonably expected of persons holding themselves out as skilled accountants," the court stated that the statutory standard of care expressed in Form X-17A-5[48] — that the audit shall be made in accordance with generally accepted auditing standards — did not differ from the duty otherwise imposed by law.[49] Applying this analysis to the facts of the case, the court concluded that the fundamental issue was whether defendant conducted its audit with due care in accordance with generally

48. *See* note 5 *supra*.

49. In rejecting plaintiffs' contention that failure to discover First Securities' noncompliance with Rule 27(c) of N.A.S.D. also constituted a breach of duty, the court noted that the profession did not require such an intensive investigation. The court added, however, that it was not constrained by standards set by the profession if these were found to be inadequate. The court also rejected defendant's defenses of estoppel and running of the statute of limitations, stating that the jury must decide if plaintiffs' prior conduct constituted estoppel and that the statute does not begin to run until the plaintiffs knew or should have known of the fraud.

accepted auditing standards. Relying on affidavits of three respected accountants and statements published by the American Institute of Certified Public Accountants,[50] the court concluded that jury findings were necessary on two genuine issues of material fact: whether the mail rule was a material inadequacy and whether defendant failed to exercise due care by failing to disclose this material inadequacy. As to the final element of the cause of action, the court stated that to show a causal connection plaintiff must show that the exercise of due care by defendant would have lead to the discovery of the fraud. The court noted that if defendant had reported the existence of the mail rule it might have been possible for defendant, the SEC, or some other self-regulatory agency to uncover the underlying fraud; this it said also required a jury determination. Thus, the instant court held as a matter of law that pursuant to section 17(a) of the 1934 Act accountants have duties of inquiry and disclosure, which inure to the benefit of the investing public, and that any factual issues concerning the existence of a breach of duty and a causal connection between the breach and the injury must be determined by the finder of fact whose affirmative decision would establish liability for aiding and abetting a violation of Rule 10b-5.

IV. COMMENT

The instant decision is of major importance because it clearly defines a more liberal standard for aiding and abetting under section 10(b), reads a requirement of due care by accountants into section 17(a), and serves as an additional warning to the accounting profession of its expanding responsibilities in the field of securities regulation. By establishing negligence, duty to disclose, and causal connection, rather than actual knowledge, substantial assistance, and reliance, as the major elements of aiding and abetting a violation of Rule 10b-5, the Seventh Circuit has given this cause of action the broadest interpretation to date. Nothing precluded this interpretation because private civil remedies under Rule 10b-5 are themselves creations of the courts. This decision, the outcome of which had been predicted by one commentator,[51] may be viewed as the culmination of a liberalizing trend that began in *Brennan*. Since these elements are defined in the abstract, they should apply in the Seventh Circuit in all aiding and abetting actions brought under the 1934 Act. The novel interpretation of section 17(a)[52] to define the

50. *See* AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, *Statements on Auditing Procedure No. 33*, in AUDITING STANDARDS AND PROCEDURES 10-11, 16, 28 (1963).

51. Ruder, *supra* note 31.

52. Congressional history reveals no desire on the part of Congress to create a legal

scope of duty owed by the profession to the investing public is particularly significant to the accounting profession. The scope of the duty imposed by this section, however, is not new; the instant court requires only that accountants use the standard of care set by their profession — disclosure of any material inadequacy and refusal to certify a misleading financial report. This duty of care corresponds to that of the modern requirement for common-law negligent misrepresentation. The section 17(a) statutory action differs in that it does not require reliance, but merely a causal connection. Although this will expose the accounting profession to increased litigation, discarding the reliance requirement is reasonable when viewed in the context of the 1934 Act. The responsibility for auditing and certifying financial reports was placed upon the accounting profession in response to its own demands and the SEC has given the profession considerable freedom in setting its standards.[53] Implicit, however, in the requirement that such reports be prepared and certified is the assumption that they are accurate, or at least that due care was used in their preparation and in the subsequent audit. Recognizing that the SEC requires these statements for the protection of the investing public, the Seventh Circuit acknowledges the reliance that investors place on independent public accountants and an implied foreseeability that negligence in this area exposes the entire class of investors to injury. Given this relationship, the requirement that the investor merely show a causal connection is not too extreme a departure from common-law foreseeability and reliance. With this decision the Seventh Circuit has issued a warning that in preparing and auditing reports filed with the SEC pursuant to the Act, the accounting profession must establish and follow responsible standards or be faced with civil liability. This threat of aider and abettor status hopefully will serve as a force motivating the independent accountant to resist an unscrupulous client's pres-

obligation for accountants under § 17 of the Act. *See Hearings on S.R. 56 and S.R. 97 Before the Senate Committee on Banking and Currency*, 73d Cong., 1st Sess. 6561-62, 6637, 6673, 6716-17, 6726, 6841, 6914, 6993, 7043, 7484, 7489, 7529 (1934); *Hearings on H.R. 7852 and H.R. 8720 Before the House Committee on Interstate and Foreign Commerce*, 73d Cong., 2d Sess. 225, 262, 536, 666, 670, 750, 804 (1934). Congress provided for a remedy under § 18 of the Act. See note 21 *supra*.

53. 2 J. CAREY, THE RISE OF THE ACCOUNTING PROFESSION TO RESPONSIBILITY AND AUTHORITY 1-19 (1970). Although the court recognizes that compliance with generally accepted standards constitutes the standard of care, it does not feel that it should be constrained by standards that it feels are too lax. *See* note 49 *supra*. Thus, even though an accountant follows accepted procedure he may still be liable if the procedure is found to be inadequate. Other cases have similarly held. *E.g.*, United States v. Simon, 425 F.2d 796 (2d Cir. 1969), *cert. denied*, 397 U.S. 1006 (1970); Gerstle v. Gamble-Skogmo, Inc., 298 F. Supp. 66 (E.D. N.Y. 1969).

sure on him to either bend the rules or look the other way. This can only help to increase the independence of the profession and afford even greater protection to the investing public.

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