ASSOCIATION OF BUSINESS TRIAL LAWYERS

abtl REPORT

Volume III

Number 3

Letter from the President

As the seventh person to serve the Association as its president in as many years, I should like to devote my first "Letter from the President" column to reacquainting readers with the main purposes and functions of the organization. In so doing, my intent is both to stimulate renewed interest and activity on behalf of the present membership and to encourage other readers to join forces with us.

This issue of the *ABTL Report* is scheduled for publication around mid-October, barely three weeks before our nation's quadrennial electoral contest. For that reason, and on the assumption that most readers will have had their fill by now of presidential-style preachments, I shall resist any further temptation to act 'presidential' and proceed to my stated task.

Thomas J. McDermott, Jr.

The purpose of the organization is: "To advance the science of jurisprudence as it relates to trial advocacy; to promote judicial procedural reforms; to educate practitioners and to disseminate information of interest to those members of the legal profession practicing business litigation through a continuing legal education program . . . ."

Members of the Board of Governors serve for two years. They are elected to the position through the following process. Each April, a nominating committee (appointed by the President) nominates eight persons to serve for the coming fiscal year (July 1 - June 30). This list of nominees is circulated to members and additional nominations may be submitted in writing. An election is held at the June membership meeting.

When the new board has been constituted on July 1, it meets to elect officers. By tradition, the officers are not members of the board and proceed through a system of chairs. Each year, the board has elected a new person to the office of treasurer and that person has then ascended (by board election) to the office of secretary and president-elect. The president-elect automatically becomes president, thus assuring a two-year executive continuity, necessary to plan long-range events such as the October

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Interview: Trial of a 10b-5 Class Action

Ed. Note: The long-standing 'Capitol Records' case, an action for securities fraud brought under Securities and Exchange Commission Rule 10b-5, ended recently with denial of a rehearing by the 9th Circuit Court of Appeals sitting in banc, thereby letting stand an affirmance of judgment for the defendants (Capitol Records) rendered in a memorandum decision on April 5, 1978 by U.S. District Court Judge William P. Gray. First filed in 1971 (ROCCO CATENA, etc. vs. CAPITOL INDUSTRIES, INC., et.al.), this may well constitute one of the first open-market purchaser 10b-5 class suits yet tried on its merits in the country. The non-jury trial took 58 actual days over a nine month period, between September, 1975, and June 1976. Post-trial briefs took over a year and Judge Gray's decision almost two years from the end of the trial. Approximately 800 exhibits were filed in the case. The defendants were represented by the trial team of Alan N. Halkett, Joseph A. Wheelock, Jr. and Peter H. Benzian, partners in the firm of Latham & Watkins. Messrs. Halkett and Wheelock graciously consented to an interview about aspects of the case of potential interest to readers of abtl Report.

abtl: Why did this case not settle?

Halkett: An unrealistic evaluation or demand – or both – was placed on the case by the class plaintiff. The appraisal on our side was that his demands were out of line. There were ongoing discussions for two or three months before the trial actually started and, later, off and on discussions until about two or three months before the 9th Circuit opinion. Because the plaintiff was represented, over time, by several lawyers, you would really have to ask each of them this question.

Wheelock: The parties never got close.

abtl: What damages were sought?

Halkett: The prayer was $120 million. Realistically, in our minds we were looking at an exposure of $20 to $40 million.

Wheelock: The problem was the age-old one of how to measure damages under 10b-5. The plaintiff had a number of different theories, but the main one was that damages ought to be awarded to every member of the class–i.e., every person who purchased stock from June 1, 1969, to December 31, 1971, based primarily on the difference

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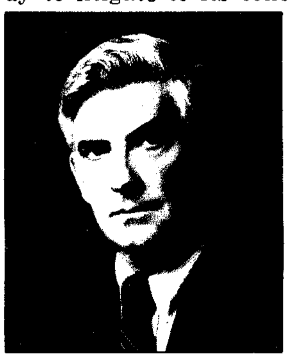
between what he paid for the stock and what he sold it for, or if he had not sold it, what its value was in or about December, 1971. Our view was that damages should be based on an out-of-pocket measure—i.e., in general, the difference between what the person paid for his stock and what he would have paid for it in the absence of the alleged fraud.

Halkett: The length of the class period, coupled with the nature of the issues and their specificity, caused us a great deal of difficulty in trying to make an accurate damage assessment. For example, if the court were to have found an alleged misrepresentation was actionable and created liability, it might have occurred in 1969, 1970 or 1971. We had a 2½ year class period, but if, say, 1971 were the only actionable year, that would reduce the size of the class. Furthermore, Judge Gray's class action order included an opt-in provision rather than an opt-out provision. It required that those who received notice had to notify the clerk with a statement including certain factual data to be considered part of the class.

An interim appeal of Judge Gray's order did go to the 9th Circuit, which, in effect, ducked the substantive question by dismissing the appeal on a procedural ground and thus leaving open for further discussion, if necessary, the propriety of an opt-in versus an opt-out requirement. So, we had the question of whether we were faced with a limited class of those who opted in or a class which eventually would be enlarged to everyone. It was not very easy to put all these factors together and make an accurate assessment.

abtl: Is there anything of lasting significance about this case that ought to be summarized?

Halkett: I'm poor at pulpit talks, but there is, I know, a concern on the part of most defense lawyers that the risk is so high in a case of this kind that it is almost foolhardy to litigate to its conclusion. I don't think that's true. Some of these cases can be handled and should be tried. That does not mean, of course, that if there is merit in the plaintiff's claims you should fight to the death. Perhaps I'm speaking too much like a defendant's lawyer, but the economic coercion which a plaintiff can put on a company in a class action suit of this kind is so enormous that there is an initial tendency from day one to handle the case as if it is going to be settled. This creates a self-fulfilling prophecy in many cases, because you may get to the point where you cannot do anything else but settle.



Alan N. Halkett

More cases should be started with the premise that they will be tried and, based on what is subsequently developed, perhaps settled. For example, in a case of this kind (Capitol Records) my feeling is that a defense lawyer may be better off trying to move the case forward to trial expeditiously than giving it the typical 'Let it sit, let it wait' treatment. There are a couple of reasons: first, people leave, you lose your employees, and many tend to be disgruntled ex-employees. Second, the more time the plaintiff has to play in your information pile, the more opportunity he has to dredge up new issues he never thought of before. And then you've got to start all over again preparing for those newly advanced "issues."

Wheelock: I agree with Al. In hindsight, I would have pushed this case to trial. I would have filed our own motion for class certification, gone to Judge Gray and said, 'Let's try it. What's the first available time on your calendar?'

abtl: How did you organize the case?

Wheelock: It was horizontal rather than vertical division of labor. We joint ventured the case. I tended to handle most of the accounting-type witnesses; Al handled the business people, the non-financial types. But Al was very clear on what I was doing and vice versa. It was not that difficult. The case broke down into certain subject areas based, as I recall, on plaintiff's responses to a set of contention interrogatories. We separated the accounting issues from the non-accounting issues. The accounting issues raised questions about the returns reserve, obsolescence reserve, cooperative advertising reserve, so-called deferred manufacturing variances, etc. The questions were easy to break down when you had straightforward accounting documents. They were more difficult when you had operational people writing memos to each other which would have had an effect on accounting decisions.

abtl: Sounds like a documents case.

Halkett: In part it was, but in a lot of ways not. Many depositions were taken. We were really talking about difficult accounting issues. But the definition of an accounting issue is what the listener perceives it to mean. When, for example, do you write off a bad debt? That's an accounting issue, but it's also very much a judgmental issue. When does a business reasonably believe that a debt is not going to be collectible? When do you set up a reserve? What are all of the facts known to management at any particular point in time upon which a prudent person should have come to a decision?

In 1976, of course, with *Hochfelder* [426 US 185 (1976)] the Supreme Court put the word "scienter" on it. From the outset, we all realized there was some sense of underlying culpability that had to be the guts of the case, because the types of accounting issues Joe mentioned all could be characterized as judgmental. What would two people have done, given the same set of facts? Can you detect, in what the people were doing, a pattern that has nothing to do with honest business judgment but seeks some other goal? We were always looking to see, in analyzing every document, whether, directly or indirectly, there were indications of people not exercising business judgment *qua* business judgment; in other words, was there something else going on you could call by some other name?

Wheelock: Al has put his finger on the key – the judgmental aspect. The accounting issues basically boiled down to that.

abtl: Did you use a consultant?

Halkett: We used an accounting firm as a consultant. One of the things you want to consider, depending on your client's ability to pay, is whether you can afford to have two strings to your bow (i.e., consultant and testifying experts). Also, there is always a certain risk that you may not be able to protect the confidentiality of your dealings with your testifying expert. In our case, the consultant was helpful to us.

Wheelock: One of the major problems in dealing with an

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Shifting the Attorney's Fee Burden: A Cautionary Note

In a thoughtful and innovative *ABTL Report* article, H. Walter Croskey proposed legislation enabling attorney's fees in litigation to be assessed against a losing party. In general, his proposal envisaged affording to trial courts broad discretion to award or not to award fees based upon an assortment of factors revolving around "good faith" in litigating and discussing settlement.

Croskey sees as a consequence of such legislation a reduction in court congestion by the elimination of frivolous filings. Conversely, he foresees the increased filing of *smaller but meritorious* cases that would not otherwise be economically justified. Also, reasonable settlements would be encouraged. He points out that the American "rule" disallowing attorney's fees recoveries is now encrusted with so many judicially-created and statutory exceptions as to demonstrate the need for more general reform.

The points made are valid in many respects, but some cautionary notes are in order:

1. If it is true that fees for litigation have come to dwarf the amount sometimes at issue, will not shifting the burden of such fees distort the proper focus of the litigation? For example, if the lawsuit asserts a claim for $15,000 and each side runs up a $20,000 fee bill, what is the lawsuit about – the claim or who is stuck with a double bill for counsel?

2. Does a massive increase in the "in terrorem" aspect of losing a lawsuit necessarily lead to better justice, or does it simply frighten away those with at least arguable positions to assert on their behalf?

Robert S. Warren

3. Will court congestion actually be alleviated by giving attorneys sources for payment of their bills other than those who have retained their services or the fruits of the lawsuit itself? Isn't it the case that presenting opportunities for court-awarded fees is actually a spur rather than an impediment to litigation? The point is illustrated by measures designed to encourage "public interest" suits by enabling fee shifting under the rubric of the common fund doctrine or the substantial benefit doctrine or the private attorney general concept.

4. Won't the proposed legislative grant of broad judicial discretion to shift fees mandate that virtually *every* winning litigant seek such an award? If so, we would have insured adding an attorney's fee claim mini-trial to most lawsuits, with a consequent price in terms of increasing the expense of litigation, prolonging it and thereby exacerbating court congestion.

5. And speaking of broad judicial discretion, is the bar actually ready to hand to trial court judges the weapon of apportioning many thousands of dollars of fees on the basis of who was or was not suitably tractable in settlement negotiations? Settlement is the proper goal of most litigants and their advisers; and the efforts of trial courts to clear calendars by pursuing aggressive settlement programs is laudable. However, it may be that the persuasive powers of judges on that subject are sufficient without the additional authority to assess many thousands of dollars in attorney's fees against a party who did not accept a settlement figure retrospectively deemed appropriate, with such exercise of discretion being reviewed, no doubt, on the "abuse of discretion" standard.

6. On the subject of appeals, one should expect a trial court decision on fee shifting, whether for allowance or disallowance, to constitute another impetus to appeals being taken even in garden variety cases.

7. The "one-way ticket" problem bears consideration as well – i.e., the impecunious litigant who rolls the dice at the suggestion of his counsel has a shot at fee recovery, but the target has no meaningful reciprocal opportunity. One cure would be to put the attorney at risk for such an award as well as his or her impoverished client, but, it must be supposed, one can't count on a burst of enthusiasm for that prospect.

Croskey proposes a possible motion for security for costs and fees, with posting as a condition to eventual recovery so as to insure reciprocity. But bonding statutes have their own problems, for example:

a. The requirement of further motion proceedings and court hearings;

b. Squabbles about the adequacy of undertakings by sureties when a corporate bond is not employed; and

c. Constitutional objections to requiring the poor to have the ability to post bonds as a condition to receiving rights available to the wealthy.

The foregoing considerations are not intended to throw cold water upon the reexamination of the so-called American rule which the Croskey article proposes. (See also the discussion by Professor C. Dallas Sands, *"Attorney's Fees as Recoverable Costs,"* 63 A.B.A.J. 510 (April 1977).) However, they do indicate that the reexamination should not proceed on the supposition that a change toward fee shifting is necessarily beneficial.

For the present, it may well be that most of the concerns voiced by Croskey can be addressed – but without serious impediments discussed above – by application of the principle long applied in federal courts:

> [By use of its inherent equitable powers,] a federal district court may award attorney's fees in favor of one party and against another, where an unfounded action or defense is brought or maintained in bad faith, vexatiously, wantonly, or for oppressive reasons. But only in exceptional cases and for dominating reasons of justice can the exercise of the power by the district court be justified. . . .

6 Moore, Federal Practice (2nd Ed. 1971), ¶ 54.77[2], pp. 1709-11, fn. omitted; but see discussion in *Young* v. *Redman*, 55 Cal. App. 3d 827, 833-839; 128 Cal. Rptr. 86 (1976).

Such a principle supplies a formidable financial weapon against abusive litigation practices with compensation flowing to the victim of those practices. However, the test of bad faith is sufficiently severe to reserve use of the procedure to those relatively rare situations justifying exaction of the penalty.

—**Robert S. Warren**

(The author is a partner in the firm of Gibson, Dunn & Crutcher.)

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expert is not that you cannot get him to see your point of view and come out with a favorable opinion, but almost the opposite. The natural human reaction is for an expert, once he gets into the case, to become part of the team. His opinions become more and more favorable to you. You get the feeling the guy is becoming too much of a "homer." It's always nice to have a consultant help you to see when your testifying expert is becoming too much of a "homer."

abtl: How did you control the economics of the case?

Wheelock: Costs, per se, were not a major factor. The general direction from the client was: do whatever it takes to defend us. We could not come up with any very firm opinion about the reasonable outside limit of damages – within, of course $50 million – however, we knew that exposure was great.

abtl: In round numbers, what did the case cost the client?

Halkett: An arm and a leg. There are a couple of messages here for people who may not have encountered something like this. First, this is not the type of case in which the defendant has a great deal of control over discovery; there really is very little discovery of the plaintiff to be done by the defendant. Part of the cost, therefore, depends on how vigorous your opponent is in pursuing discovery. Giving your client any sort of time-fee estimate in advance is extremely dangerous. You can't control it.

Second, you have very little control when the case actually gets into trial. The trial consumed 58 actual trial days, but these were stretched over a nine month period. Because of the interruptions, we probably prepared two or three times for each actual day of trial. The Speedy Trials Act forced Judge Gray to set aside time needed for criminal trials as they came up. This meant that on a weekly basis all the clerk could do was give his best estimate of what the following week or weeks would be. You can't prepare a witness on a Monday for Tuesday testimony and, finding you're not on until the following Tuesday, allow the witness to return as if you've talked to him the day before. The format was extremely difficult to handle. We were constantly explaining the judicial system to witnesses and businessmen, and, in many cases, having to juggle our preferred witness order because of the inability to have all our witnesses available when we wanted them.

abtl: Did the plaintiff ask for a jury trial?

Halkett: No.

abtl: Could a jury have handled a case like this?

Wheelock: Absolutely not. There was no way a jury could have understood what the witnesses were talking about. Whether a jury would have been able to get an accurate gut reaction just from listening to witnesses, who knows?

Halkett: Could a jury have handled it? I would have said yes. Could a jury have understood what was going on? The answer is no. But a jury could have come to the same result: that this was not some sort of nefarious scheme.

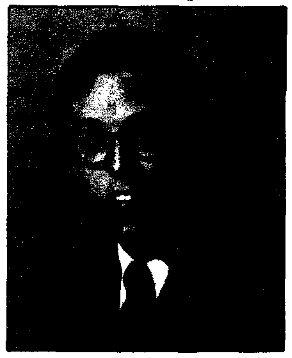
abtl: Was any part of the case turned over to a master?

Halkett: No.

abtl: What kind of learning experience was this?

Wheelock: A couple of things. One, we learned how sophisticated the judge was in accounting and financial matters. We had been prepared to spend quite a bit of time with our expert getting across the point that, although accounting uses numbers, it is not a strict science as such. But we found in Judge Gray's questions to plaintiff's witnesses that he was very sophisticated in this area and fully understood that particular concept.

Secondly, a business *defense* case is one of the most boring cases you can possibly try to put on. At least in a personal injury case there has been some contact between a plaintiff and a defendant. An opportunity exists to try the plaintiff, so to speak. Here, on the face of it, we thought we might have the chance to try the plaintiff. As things turned out, however, we really didn't, because Mr. Catena (representative class plaintiff) became irrelevant to the whole thing. Here, Capitol Records did suffer very severe financial reverses in fiscal '71 and its stock went to hell in a handbasket. A lot of people lost a lot of money. Now that's the fabric for a story that at least has some interest.



Joseph A. Wheelock, Jr.

In any case of this kind, the plaintiff can put a bunch of figures up on the board and say, "Why did you make this reserve adjustment? Didn't you know that was going to increase pre-tax earnings by $800,000?" By taking just one side of the ledger, the plaintiff can make it appear as if the only thing the company's financial people did over a period of time was juggle figures around in order to meet predetermined earning estimates

Now the defense case is basically of two types: One – "No, we didn't do it." Or, two, "the plaintiff has vastly over-simplified the complexities of the decision-making process that led to these things. And, judge, I am now not only going to give you the 'no' answer, but also bore you for the next three months with the complexities because this is an extremely complex business."

So one of the messages I draw from this case is that we were able to win it in front of a judge because he *did* listen to that kind of evidence and he *did* conclude that the plaintiff had vastly oversimplified the decision-making process that was being called into question.

Halkett: There is a broader aspect to some of these cases which presents a conundrum to many businesses. In the average business case the company is looking at the effect of an adverse judgment on its earnings, but it is not confronted with the prospect that an unfavorable result may cause the total elimination of its corporate life. When most companies face the prospect of being hit with several hundred million dollars of damages, what they are really facing is a life or death judgment. It's a different sort of risk analysis in terms of settlement and valuating the case.

A major class suit, therefore, becomes much more than just money for many companies – and for a lot of people, of course, *just money* is extremely important – which interjects into the analysis of the case a totally different dimension. You can't appraise it or advise your client about settlement in the same way. If you're wrong, you may be presiding over its funeral. This is undoubtedly why so many of these major class actions have been settled. Whatever it costs, it is better than taking that risk. Also, it is becoming increasingly difficult in today's marketplace to give any sort of comfort to any client about what's going to happen in the courtroom. A settlement, and the amount of any settlement, tend to take on the position of buying disaster insurance.

On a slightly different basis, when you have a case as complicated and technically oriented as this one that goes on for so many years, it's hard to maintain one's concentration and intensity, that is, to do everything the case deserves and to keep up the momentum. You hit the wall maybe at 3½ years, and if you break through it you can get to the end.

Finally, another thing I learned is the difficulty of dealing with internal administrative problems in handling a case of this kind, where you have the need for different levels of legal experience and manpower at various times. You can run into problems, particularly with younger lawyers who have other interests, callings and desires and are trying to build a career. They may find that too much time spent on one case is detrimental to their career. Either they want to leave the case or take other work that effectively makes them unavailable for things you need when you need them. Managing internal attorney time is difficult, particularly in a case extending over a long period of time and characterized by peaks and valleys.

abtl: Did you use any demonstrative evidence or graphic displays?

Wheelock: Yes. A good part of the case, for example, had to do with adjustments to reserve accounts, which the plaintiff insisted on calling "reserve raids." The plaintiff was absolutely religious in his approach; he never discussed, never even mentioned any adjustment to reserve accounts which increased them and decreased pretax profits by a charge against income. He refused to admit those occurred. So we put together a series of schedules that showed how the adjustments were made month to month. I can see a jury looking at them and not understanding a thing. I think that Judge Gray was interested in them because it enabled him to see the whole scene, the whole reserve, as it appeared over a period of time compared to seeing just one side of the ledger.

abtl: Did you take depositions of members of the class on the question of whether there was reliance? In other words, was there any causal connection between any omission or misstatement in the financial statement and the purchase of the stock?

Halkett: I'm not sure what the law was in the 9th Circuit before our case. It seemed to be that reliance was really not a separate element of a 10b-5 case. What the court was going to do, therefore, was look as the materiality of the alleged non-statement or misstatement and then decide whether that piece of information was sufficiently significant within the total mix to have influenced the investor's decision. I'm not sure what the court was saying in *Blackie v. Barrack* [524 F 2d 891 (9th Circuit) 1975)]. Whether it said: We are removing from the plaintiff the affirmative burden of proving actual reliance in order to prove a cause of action, but leaving open the question that, if the defendant could show actual non-reliance that would destroy it. Or whether the court was saying: Reliance is no longer an element in the cause of action—period. I don't know the answer to that.

Wheelock: It seemed to me that – to the extent the class was saying through its counsel: 'We have been damaged because there were false financial statements issued. The impact of those false financial statements caused the price of the stock to be traded *above* what it would have been traded had the information been correct' – it made no sense to say that the plaintiff had to prove what judges and law professors are now calling transactional causation, i.e., but for the issuance of the financial statement the person would not have bought the stock.

All plaintiff is saying is: 'I never read the thing, I could care less. But it had an impact on the market. It was inherent in the price.' That makes a lot of sense. But if you follow the *Blackie* v. *Barrack* dictum – which says that in an appropriate case we will permit a rescissional measure of damages – then you've got a whole new ballgame. That was evidenced quite nicely in this case, where Capitol's stock went right through the floor while Capitol was reporting the highest earnings in its history, and plaintiffs were screaming that this was *the* most fraudulent of all the financial statements put out. It was quite obvious that the stock had not been impacted at all by the financial statements. It had gone down because of the Beatles [Ed. note: the musical group had announced its break up] and because the stock market took a tremendous loss in the spring of 1970 anyway.

The point I was making, which the judge never got to, is: If you're going to bridge that *Blackie* v. *Barrack* gap and say, 'Alright, in this type of a case I am going to permit the recovery of rescissionary type damages, i.e., the difference between what the person paid for the stock and the price he sold it' – then you've got to have some kind of reliance concept. Otherwise it makes no sense at all.

Now if the person can come in and say, 'I read that financial statement and was looking at these numbers, and here's my financial plan: this company showed an earnings trend of X percent, and if they had not shown that I wouldn't have bought it; I would have put my money in a savings account' – then I think the person has a good case for saying he should be awarded the difference between what he paid for the stock and what he sold it for after he learned of the fraud, given a reasonable period of time to mitigate damages by going out and selling.

But I have yet to find that analysis adopted or even discussed by any court or law journal article. People talk in vague terms about there being no such thing as reliance under 10b-5 without figuring out, 'Yes, there may be an element of reliance depending on the measure of damages being sought.'

Halkett: Because of the broadness of the language in the definition of the class, it included one or two stockholders who had acquired Capitol stock as a result of direct transactions, e.g., the sale of a business to Capitol in return for issuance of shares. Well, those people were not buying on the marketplace. It was a totally different transactional relationship between them and Capitol, and in such cases actual proof of reliance could reasonably be expected.

I think that the rationale for taking reliance out of the case is the recognition that if you don't, in most cases, you cannot have a class action; practically, you

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would have to bring into court all of the plaintiffs and prove what they did or did not do.

The issue of reliance in this type of case raises some interesting problems. Suppose, for example, you have a class action plaintiff who is certified as a class representative whom the defendant can show, for one reason or another, did *not* rely on the alleged misrepresentations. How does that, or should that, affect the ability of that individual and/or other members of the class to establish liability? If he stands in the shoes of the class, and if reliance is a necessary element of the plaintiff's case, theoretically none of the class relied because he didn't rely. And on and on it goes.

abtl: Did you depose Mr. Catena or other members of the class on the question of whether there was actual reliance?

Wheelock: At the beginning of the case we took Mr. Catena's deposition and sort of got into that area. In the early stages, of course, we all thought that the case eventually would cool down, which it didn't. I thought about the concept of taking depositions of many members of the class, but the law didn't appear to permit it. And, what are you going to get if you call in some shareholder and ask: 'Alright, you purchased so much Capitol stock. Did you read the financial statement?' It didn't seem to make a lot of sense. I had the feeling that if we ever got there, if the plaintiff were ever to have established liability in this case, there would have had to be some kind of second stage on the question of damages.

abtl: Any final thoughts?

Halkett: I think the thing that bothered Judge Gray as much as anything else about the merits of the case was the issue of material omissions in the company's published materials. It's one thing to take a statement which *is* made and examine it in the light of circumstances to decide whether it may have been a misstatement, overstatement or misleading statement. It is an entirely different matter to deal with the contention that the company possessed information and should have said something which it didn't say. Expanding on that subject, an annual statement could easily take on the heft of the Los Angeles Central Telephone Directory. And even then, would it contain everything? I had the sense that what troubled Judge Gray more than anything else was how to deal with this problem of corporate omissions, or so-called non-disclosures. Because of the relative brevity of his memorandum opinion, we don't really have a feel on how he came out on that.

Wheelock: The case proved a theory of mine that some people may not agree with. We spend a great deal of our time as trial lawyers in dealing with the art of cross examination. But for many lawyers, if not most lawyers who try these types of cases, cross examination is the easiest to prepare. You're sort of naturally good at that. The next hardest thing to do is present your own witness on direct examination and make him interesting and believable. The most difficult thing by far is to prepare your own witnesses to be called flat out as an adverse witness by the opposing party. When they are called into the box, you don't know what is going to happen. You have tremendous problems with them, because they are being thrown into the cauldron of cross-examination absolutely cold, with no prior opportunity to acclimate themselves to being on a witness stand.

Letter from the President

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seminar. Your officers for 1981 are:

Dinner membership meetings, dedicated exclusively to to the continuing education of the business litigator, are generally set for every other month on the first Tuesday.

A three-day seminar with an in-depth analysis of various topics of importance to the business litigator is held each year over a weekend in late October. This year's seminar will be on October 24, 25 and 26 at the Canyon Hotel and Country Club in Palm Springs and will focus on remedies available in business litigation.

The ABTL welcomes comments on ways to improve its service to the legal community at large and the business litigator in particular.

—Thomas J. McDermott, Jr.

abtl REPORT

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