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Accounting Firm Not Liable for Malpractice where Client Knowingly Filed a False Income Tax Return

By Peter M. Vetere, Esq.

IN THIS WORLD NOTHING CAN BE SAID TO BE CERTAIN, except death, taxes, and malpractice suits. Fortunately for the accounting firm, a malpractice claim will fail when the client's own criminal conduct caused the underlying damages. This is the holding of a recent case from Texas, *Andrew Shebay & Co., P.L.L.C. v. Bishop,* No. 01-12-00118-CV, 2013 WL 1844213 (Tex. App. May 2, 2013).

In 1991, Texas lawyer George Bishop received $933,333.33 in income from a client of his law practice. He did not file a federal income tax return until 1994, when he hired Andrew Shebay & Company, PLLC to prepare his 1991 return. The return did not report the payment as income.

In 1999, a federal jury convicted Bishop of tax evasion and knowingly and willfully filing a false tax return, for not reporting the client's payment. The Fifth Circuit Court of Appeals upheld these convictions.

In 2006, Bishop settled with the IRS and agreed to pay the taxes, penalties, and interest he owed for 1991. Bishop then sued Shebay for malpractice related to the preparation of the 1991 tax return, seeking to recover as damages the amount paid to the IRS in the settlement. The malpractice claim went to trial, and a jury found Bishop and Shebay each fifty percent responsible. The trial court entered judgment against Shebay, awarding $375,000 in damages to Bishop.

Shebay appealed, arguing that Bishop's criminal conviction for filing a false tax return barred him from suing Shebay for malpractice related to the preparing of the false tax return. The Court of Appeals of Texas agreed, reversing the award of damages to Bishop and rendering judgment in favor of Shebay.

The Court's decision turned on the doctrine of collateral estoppel and on Texas public policy. Collateral estoppel prevents a party in a civil case from re-litigating an issue that was already litigated and decided in a criminal case, if the issue was (1) identical to that in the criminal case; (2) actually litigated; and (3) as determined, a necessary part of the prior judgment. If these elements are met, the issue is deemed decided and the party is prohibited from attacking it in the new case.

For Bishop's malpractice claim, he had to show that Shebay's accountants failed to provide competent service and advice, that Bishop acted in reliance on that poor advice, and that the reliance led to Bishop's damages. But since Bishop's criminal convictions had already determined that he had *knowingly and willfully* filed a false income tax return, not out of reliance on his accountant's advice, he was collaterally estopped from asserting the malpractice claim. Indeed, during the appeal of the criminal case, the Fifth Circuit had specifically noted that Bishop provided incomplete and inaccurate information to the accountant preparing his return.

In addition, the Court ruled that Texas public policy prohibiting a plaintiff from recovering damages from his own illegal acts also prevented Bishop from asserting the malpractice claim against Shebay. This policy particularly applies when a plaintiff commits the illegal act knowingly and willfully, as Bishop did.

Connecticut Appellate Court Partially Reverses Trial Court's Entry of Summary Judgment in Favor of Defendant Accountant, but Refuses to Apply CUPTA to Professional Malpractice Claims

By Craig J. MacLellan, Esq.

EARLIER THIS YEAR, THE APPELLATE COURT OF CONNECTICUT ISSUED an opinion in the case of *Stuart et al. v. Richard M. Freiberg,* 142 Conn.App. 684 (2013), involving claims of fraud, negligent misrepresentation, accounting malpractice, and a violation of the Connecticut Unfair Trade Practices Act ("CUTPA"), on appeal from the Stamford-Norwalk Superior Court. The Court affirmed in part and reversed in part the Superior Court's ruling, which granted summary judgment to the defendant.

At issue before the Court was whether the Superior Court correctly granted summary judgment for the defendant, an accountant for a trust managed by a malfeasant trustee against whom judgment had previously been entered in a separate action. The plaintiffs' four claims essentially alleged that the accountant had assisted the trustee, in violating his fiduciary duties and diverting trust assets for personal use or gain, by preparing fraudulent or misleading financial reports to the plaintiffs concerning the assets of the trust.

By way of background, the subject trust, the Kenneth J. Stuart Living Trust, was created by will in 1991 by Kenneth J. Stuart, Sr. After his father's death, Kenneth J. Stuart, Jr. became the sole trustee of the trust and the executor of his father's estate. Upon becoming sole trustee, Stuart Jr. engaged in numerous transactions involving the assets of the estate, including the purchase of real estate, the transfer of property from Stuart & Sons to himself and his wife, Deborah Stuart, and the commingling of the estate's assets with his own. Stuart Jr.'s actions caused his brothers to bring a seven count action against him in December of 1993 (the "first suit"), in which they alleged that Stuart Jr. exercised undue influence over Stuart Sr., and that he had breached his fiduciary duty to the trust in numerous ways.

Judgment entered against Stuart, Jr. in that action, and the court awarded monetary damages in favor of the estate in the amount of $2,375,528, including interest, ordered the LLC to pay the sum of $60,539, including interest, to the estate, and ordered accounting fees in the amount of $180,000. In calculating the damages it awarded to the plaintiffs, the Court found that Stuart Jr. had continued to breach his fiduciary duties to the trust throughout several of the years during which the suit against him had been pending. The defendant in the present case, Richard Freiberg, had served as Stuart Jr.'s accountant and the accountant for the trust throughout that time and had provided financial reports concerning the assets of the trust to the plaintiffs.

Ultimately, William and Jonathan Stuart filed the subject suit against Richard Freiberg. The complaint contained four counts, alleging fraud, negligent misrepresentation, accounting malpractice, and a CUTPA violation. Freiberg filed a motion for summary judgment, which asserted that there were no genuine issues of material fact as to any of the claims the plaintiffs made against him, and the Superior Court granted his motion as to all counts. The plaintiffs appealed.

Fraud and Misrepresentation

In conducting its analysis of these claims, the Appellate Court noted that the primary focus of the plaintiffs' appeal was the Superior Court's finding that there were no genuine issues of material fact with regard to the reliance elements of the fraud and misrepresentation claims. That is, the Trial Court had agreed with Freiberg, noting that even if the reports were misleading, the plaintiffs had not provided any support for their assertion that they had detrimentally relied on those reports, a necessary element of both claims.

The Superior Court had found that, because the brothers had previously sued Stuart Jr. and, in doing so, had sought an injunction that prevented Stuart Jr. from managing the trust's assets, they could not subsequently claim that Freiberg's accounting reports caused them to delay their efforts to remove Stuart Jr. as trustee. Essentially, the Superior Court viewed the injunction, that limited Stuart Jr.'s ability to appropriate the trust's assets, as the functional equivalent of Stuart Jr.'s removal as executor and trustee.

The Appellate Court disagreed, finding that, despite the injunction, the plaintiffs had not actually attempted to remove Stuart Jr., but instead appeared to tolerate Stuart Jr. as executor and sole trustee and allowed him to continue in that role throughout much of the 1993 litigation. The Court noted that, while the issue of whether or not Richard Freiberg's accounting reports had actually caused the plaintiffs to delay their efforts to remove Stuart Jr. is something that remained to be determined in a fact-based hearing, there was ample support for the conclusion that they had not actively sought to remove Stuart Jr. as executor and trustee, which therefore raised a genuine issue of material fact as to the reliance element of the fraud and misrepresentation claims.

In a dissenting opinion, Chief Justice DiPentima went to great lengths to outline all of the factual evidence, including the actions of William and Jonathan Stuart throughout the 1993 litigation against their brother, Kenneth Stuart, Jr., the nature of the orders they sought from the court, and the content of their depositions, in establishing that they had already intended to remove their brother as executor and sole trustee and therefore could not have detrimentally relied, as they claimed, on any later reports produced by Freiberg. In doing so, Chief Justice DiPentima essentially adopted the position of the trial court with regard to the fraud and misrepresentation claims.

Malpractice

In evaluating the plaintiffs' malpractice claims, the Appellate Court considered the Superior Court's ruling that the plaintiffs had failed to demonstrate that Freiberg, an accountant who was never engaged by either of them personally, owed them a duty of care. The Appeals Court held that, despite the lack of any contractual privity between Freiberg and either of the plaintiffs, Freiberg, in acting as the accountant for the trust, had a phone conversation with William Stuart regarding the terms of Freiberg's engagement as accountant for the trust and had prepared a statement of cash and owners' equity of the estate, with a cover letter addressed to the "beneficiaries" of the estate. The Appellate Court found that the phone conversation and the financial report with the cover letter addressed to the plaintiffs sufficiently raised a genuine issue of material fact as to whether the plaintiffs were the intended beneficiaries of Freiberg's services, and therefore whether Freiberg owed the plaintiffs a duty.

CUTPA

Finally, the Appellate Court's ruling surrounding the application of CUTPA to professionals is also worthy of note. Essentially, the Appellate Court refused to apply CUTPA to the plaintiff's claims, and therefore affirmed the trial court's ruling with regard to this count. The Appellate Court held that, because the plaintiff's claims failed to implicate any of the entrepreneurial aspects of Freiberg's accounting practice, CUTPA was not implicated. In doing so, the Court noted: "The plaintiffs misconstrue the meaning of 'entrepreneurial' to be any action performed by the defendant. It is not so broad."

The Appellate court adopted the Connecticut Supreme Court's definition of "entrepreneurial," indicating that only those "aspects of practice, such as the solicitation of business and billing practices" would implicate CUTPA, and not claims directed at the competence of and strategy employed by the professional. In short, the Appellate Court reaffirmed that malpractice claims do not fall under CUTPA.

Statutes of Limitation in Accounting Malpractice Cases

By Adam C. Benevides, Esq.

STATUTES OF LIMITATION DEFENSES TO ACTIONS AGAINST ACCOUNTANTS provide that claimants who hesitate to file their claims may be barred from asserting such actions. The application of a statute of limitations to a case may resolve the matter quickly without having to delve into the merits of the claims. For the most part, malpractice claims, negligence and other tort claims, against professionals have shorter periods of time within which a claimant has an opportunity to file suit than other claims, such as a breach of contract. Accordingly, upon receiving a complaint, a prudent defense lawyer will scour the pleadings looking for information that might trigger a statute of limitations issue and, if there is any doubt about the timeliness of a claim, she will move to have the matter dismissed without regard to the merits. When applicable, it is a very effective defense.

Statutes of limitation provide a firm deadline upon which a claim ceases to exist. This is especially helpful in situations of accountant malpractice cases where it is not always clear when the statute of limitations begins to run. Some states have enacted harsh legislation to discourage procrastination and frivolous claims.

For example, Louisiana requires a plaintiff to present his case to an accountant review panel for approval before he may file a petition for relief in court. It also imposes a one year statute of limitation which begins to run from the date of the alleged improper conduct. If the act or omission is not discoverable immediately, a plaintiff may bring his action if he discovers the negligent act within three years of its occurrence, but no later. See *Bernard, Cassisa, Elliot and Davis v. Estate of Robert Laporte, CPA,* 113 So. 3d 397, 399 (2013) *citing* Louisiana Revised Statute 9:5604(A). In other words, a plaintiff who discovers the negligent act after the fact will have one year to bring a claim from that date, unless there is less than a year left within the three year window or the discovery is made after the three year period expires. *Id.*

In the *Bernard* case, the plaintiff made the mistake of filing a petition in court before obtaining approval from a public accountant review board. On May 3, 2010, the plaintiff allegedly discovered its bookkeeper had been embezzling for several years. In March of 2011, it filed its complaint against its accountant alleging he was negligent for having failed to recognize that the bookkeeper was stealing. The defendant filed an exception to the petition for failure to seek approval from a review board prior to filing suit. The plaintiff then voluntarily dismissed the action and proceeded according to statute, filing a complaint with the Society of Louisiana Public Accountants on May 31, 2011. After obtaining approval, plaintiff filed another petition and the parties began to conduct discovery. Subsequently, the defendants discovered that plaintiff had knowledge of the claim since May 3, 2010 and, in response, filed an exception alleging the plaintiff had failed to pursue its claim in front of the accountant review board within the one year period permitted.

The court sustained the defendants' exception and dismissed plaintiff's case with prejudice, even though plaintiff had brought its initial petition within the one year period. The court explained that the statute's one year limitation is peremptory and "nothing may interfere with the running of a peremptory period…[P]eremptory periods may not be interrupted, suspended, or renounced." *Id.* at 400.

The *Bernard* case shows us not only how important it is to follow statutory requirements, but it presents an example of how legislatures may impose law to promote diligence and reduce the burden of litigation on accounting professionals. Similarly, courts in other jurisdictions have also taken a firm approach with respect to statutes of limitation concerns.

Plaintiffs often attempt to bring what are essentially professional malpractice claims under different theories, such as contract-type claims or equitable actions. However, for the most part, courts treat claims that arise out of the services performed by a professional as malpractice claims (subject to a shorter statute of limitations) even where some other duty or equitable obligation is breached. In New York, for instance, the legislature amended its statute of limitations to provide for a three year window for professional malpractice claims "whether the underlying theory is based in contract or tort." *New York Workers Compensation Board v. Madden et al.,* 2013 WL 842524 (N.Y. Sup. March 1, 2013) (referencing CPLR 214(6)). The revision eliminated prior case law declaring that malpractice actions arising out of contract are permitted a six year limitation period. *Id.*

In *Madden,* the New York Workers Compensation Board (the "Board") sued the trustees and accountants of the New York Health Care Facilities Workers Compensation Trust (the "Trust") after the Board took over administrating the Trust pursuant to alleged impropriety leading to a $33 million dollar deficit. Specifically, the Board brought claims against Lorette Belgraier, a CPA who had prepared checks, schedules and financial statements for the Trust during the period of May 2003 through July 2006. The complaint alleged that Belgraier also performed accounting services for the Trust's former administrator but only charged fees to the Trust. In addition, there were causes of action for breach of contract, breach of fiduciary duty, unjust enrichment and indemnity. Professional negligence was not specifically alleged as the statute of limitations would have prevented such a claim.

The breach of contract claim was based upon allegations that Belgraier failed to account for the hours she worked, received excessive compensation that was not justified by the services she provided, failed to perform her accounting duties and showed up to work sporadically. The breach of fiduciary duty claim was premised upon allegations that Belgraier failed to identify the dangers posed by the Trust's underfunded status and that she failed to notify the Trust and its members of such dangers. The plaintiff also alleged that by performing work for the administrator and charging it to the Trust, Belgraier breached her duty of loyalty. The unjust enrichment action was similarly based on her simultaneous representation of both the Trust and the administrator, together with the allegations that Belgraier did not perform her duties on behalf of the Trust, did not work regularly, and did not perform her services in a competent manner.

In dismissing most of the Board's claims, the court noted, "[a] cause of action charging that an accounting professional failed to perform services with due care and in accordance with the recognized and accepted practices of the profession is governed by a three year Statute of Limitations applicable to negligence actions." *Id.* at *12. The court further explained:

> In the context of a malpractice action against an accountant, the claim accrues upon the client's receipt of the work product since this is the point that a client reasonably relies on the accountant's skill and advice. This is the time when all the facts necessary to the cause of action have occurred and an injured party can obtain relief in court. The three year statute of limitations of CPLR 214(6) applies to all claims that arise out of the accounting services provided by the defendant pursuant to a contract and out of the accountant-client relationship which resulted therefrom. Accordingly, even a claim

> for breach of an express contractual promise against a professional is subject to CPLR 214(6) provided that the promise is one that the professional might be expected to accomplish using due care even in the absence of a specific contractual term. (citations omitted).

With respect to the breach of fiduciary duty claim, the court opined that the Board's allegation that Belgraier's failure to identify the dangers posed by the Trust's underfunded status and to notify the Trust and its members of the same "clearly arises out of the accounting services provided by Belgraier… and alleges that her actions fell outside the recognized standards of the accounting profession." Thus, the three year statute of limitations applied.

Similarly, the court claimed the "breach of contract and unjust enrichment are based upon allegations that Belgraier failed to render accounting services in a competent and capable manner." As such, it concluded that those "allegations arise out of the accountant-client relationship and challenge the quality of the professional services rendered by Belgraier" and also fall within the three year statute of limitations.

Interestingly, the court held that the Board's claims for recovery of professional fees on the allegation that Belgraier failed to perform the accounting duties for which she was paid, work the required number of hours on behalf of the Trust, show up for work as required, or that she was paid out of the Trust for services actually rendered to another party, did state actionable contract claims subject to a six year statute of limitations. The court explained that here the "factual allegations relied upon and the measure of damages sought are sufficiently distinct from a malpractice claim as to fall outside the scope of CPLR 214(6)."

Similarly, with respect to the allegations made against the other defendant accounting firm, Berenson & Co. LLP ("Berenson"), the court dismissed the breach of contract claim. Specifically, plaintiff alleged Berenson failed to: "originate, follow, and/or consistently apply generally accepted accounting principles; offer an accurate analysis of the Trust's financial condition; and identify the dangers the Trust's deficit posed to its solvency." The court held that the claims arose out of the accountant-client relationship and were governed by the professional malpractice statute of limitations.

However, the court did not dismiss all of the claims. It held that plaintiff's cause of action for fraud was separate and independent of a malpractice action. According, to the court "a claim of fraud alleged in connection with the rendition of professional services is sustainable where the alleged fraud is independent of any obligation on the part of the professional to render services with due care and results in damages distinct from those recoverable in a malpractice action alleging lack of due care." *Id.* at *19. Here, in this case, the allegation was that the accounting firm was selected by the former trustees to replace the prior accounting firm and became a knowing participant in a fraudulent scheme to "decline to exercise its independent judgment and, instead, deliberately misrepresented the Trust's finances to further this scheme to defraud." *Id.* The court explained:

> The alleged fraud here is not based solely upon mere accounting errors, disagreements concerning the exercise of professional judgment or a failure to disclose any such errors, but rather defendants also are alleged to have perpetrated an intentional fraud on plaintiff from the time they were retained to provide accounting services… [T]he intentional misrepresentations allegedly made in Berenson's work product and its concealment of material information from the Trust were the means by which Berenson participated in the scheme to defraud allegedly perpetrated by HWG, Taylor, and McGarrity. Since this branch of plaintiff's fraud cause of action is not merely a malpractice claim with a claim for concealment of malpractice superimposed on it, the parallel nature of the damages is not determinative of whether the fraud claim is governed by CPLR 214(6). And since such claim is not premised solely upon a failure to exercise due care or errors in professional judgment, but is also predicated on allegations of the commission of an intentional tort, application of the fraud statute of limitations does not run

> afoul of the Legislature's intent in adopting CPLR 214(6). *Id.* at *19-20. (citations omitted).

As indicated by the Court in *Madden,* courts will effectively sift through the pleadings to determine whether a cause of action arises out of or relates to the scope of services an accountant is hired to perform. If it does, the claim will be subject to the statute of limitations afforded to professional negligence claims regardless of the legal theory asserted. The Court's comments also recognize the legislature's intent to reduce the flurry of malpractice actions by forcing plaintiffs seeking damages for professional negligence to strictly adhere to the statute of limitations. Note, however, that cases also present circumstances where the professional negligence statute of limitations is inappropriate. In such cases, where the allegations state a cause of action distinct from the professional responsibilities undertaken, a lengthier statute of limitations may be applicable where the damages would arise independent of any alleged professional negligence.[1]

[1] See also *Maya NY, LLC v. Hagler,* 106 A.D. 3d 583, 584-85 (2013) (holding a six year statute of limitations appropriate where unjust enrichment claim arises from loan transaction whereby accountant accepted a $250,000 loan from client for the stated purpose of creating a tax shelter for the client, but failed to pay the loan when due and where it was alleged that the proceeds of the loan were applied to personal investments, in which accountant received income from the transaction.)

Appellate Court of Illinois Rejects Contractual Defense in Allowing Claim for Breach of Fiduciary Duty to Proceed Against Accountant

By Daniel C. Poteet, Esq.

AN ILLINOIS APPELLATE COURT RECENTLY ALLOWED a case alleging a breach of fiduciary duty against an accountant to proceed over the accountant's defense that, based on certain contractual agreements, the accountant owed no fiduciary duty to the plaintiffs. In *Miller v. Harris,* 985 N.E.2d 671 (2013), the accountant defendant sought dismissal of the plaintiffs' complaint, based on a motion that the plaintiffs had failed to allege facts sufficient to support their claim that the accountant had breached his fiduciary obligations to the plaintiffs. The Court ruled instead that the plaintiffs' complaint was not based on the contracts, but rather on the nature of the relationship between the accountant and the plaintiffs.

The plaintiffs alleged that the accountant breached his fiduciary obligations to the plaintiffs when the accountant participated in 2002 in what was effectively a hostile takeover of the company by a minority shareholder. The accountant had performed accounting services for both the plaintiffs individually and the company, serving the company beginning in 1990 and the plaintiffs in 1992. The plaintiffs alleged that the accountant agreed to follow the terms of a 1990 company shareholder agreement in serving the tax interests of the company. In 2002, the plaintiffs allege that they were effectively coerced into signing onto a new shareholder agreement that transferred majority ownership of the company to the two, previously minority, shareholders of the company. After the 2002 shareholder agreement was in place, the plaintiffs alleged that the accountant assisted the company and its newly majority shareholders in a course of conduct that served to deprive the plaintiffs of various benefits of their ownership interest in the company.

The plaintiffs included that 2002 shareholder agreement as an exhibit to their complaint and allegations that the accountant breached his fiduciary duty to the plaintiffs. The accountant argued that the 2002 shareholder agreement was necessarily adopted by the plaintiffs as a valid document by virtue of including it in their complaint and that as a result, the 2002 shareholder agreement defeated any claim of a breach of fiduciary duty because the accountant adhered to the 2002 shareholder agreement in advising the company.

The Court held that a claim for breach of fiduciary duty is separate from a claim for breach of contract, and that the existence of a fiduciary duty arises "as a matter of law from the relationship between the parties, not from documents" *Id.* at 678 (internal citations omitted). In this case, the plaintiffs alleged that the accountant owed a fiduciary duty, which included duties of loyalty and honesty and arose out of a verbal agreement with the accountant to serve as the plaintiffs' personal accountant and to provide accounting services to the company at a time when the plaintiffs were the majority shareholders. While the Court noted that it was not determining *whether* a fiduciary duty in fact existed, it confirmed that for purposes of surviving a motion to dismiss for failing to state a claim, allegations of the existence of a relationship that can create a fiduciary duty and of facts that indicate a breach of the duty are the material considerations. A contract that, if followed, would require conduct by the accountant that is in breach of the alleged duty does not trump the fiduciary breach allegations because a contract in and of itself does not override the existence of a relationship that creates a fiduciary duty.

While the alleged conduct of the accountant in this case was, if true as alleged by the plaintiffs, egregious, accountants should bear in mind in general that providing services for an entity in accordance with that entity's governing documents may not insulate the accountant from claims where other clients of the accountant may be adversely effected by the accountant's services for that entity. Accordingly, accountants should always be mindful of the totality of their relationships with clients where there may be overlapping or competing interests, and should not assume that contractual provisions will suffice to defeat allegations of breach of fiduciary obligations.

PCAOB Proposed Expanded Language for Auditor Reports

By Cheryl A. Waterhouse, Esq.

TO PROTECT THE INTERESTS OF INVESTORS AND FURTHER THE PUBLIC INTEREST in the preparation of *informative,* as well as accurate and independent, auditor reports, the PCAOB has proposed new auditing standards intended to increase the value of auditor reports by providing more information from auditors.

The two proposed standards, which were proposed in August and commented on through the beginning of this month, would require auditors to provide a discussion of "critical audit matters" specific to the audit and to provide their evaluation of "other information" that is in the company's annual report filed with the SEC. The PCAOB has indicated it may hold a public roundtable in 2014 to discuss the proposed standards and comments.

The proposed auditor reporting standard, The Auditor's Report on an Audit of Financial Statements when the Auditor Expresses an Unqualified Opinion, would retain the current pass/fail model, but also require the auditor to communicate "critical audit matters" specific to each audit. The auditor would be required to provide information not previously provided that focused on matters addressed during the audit that (a) involved the most difficult, subjective, or complex auditor judgments, (b) posed the most difficulty to the auditor in obtaining sufficient appropriate audit evidence or (c) posed the most difficulty to the auditor in forming an opinion on the financial statements. Intended to provide investors with previously unknown information about the audit in order to allow them to analyze more closely related financial statement accounts and disclosures, the standard is hoped to reduce information asymmetry between company management and investors, resulting in more efficient capital allocation and lowering the average cost of capital.

The proposed other information standard, The Auditor's Responsibility Regarding Other Information in Certain Documents Containing Audited Financial Statements and the Related Auditor's Report, would provide information regarding the auditor's responsibilities for other information outside the financial statements. Other information refers to information in a company's annual report filed with the SEC under the Exchange Act that also contains that company's audited financial statements and the related auditor's report. The standard is intended to provide a specific basis for the description in the auditor's report of the auditor's responsibilities for and the results of the auditor's evaluation of other information. The procedures would focus attention on identification of material inconsistencies between other information and the financial statements and on material misstatements of fact.

These proposed standards will increase costs for both companies and auditors. In addition, having auditors, rather than the company, provide additional disclosures about the company to investors may increase litigation risks as well.

Notes

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