Holme Roberts & Owen LLP

Attorneys at Law

John McDermott
Chair, Litigation Department and Securities Litigation and Enforcement Practice Group
john.mcdermott@hro.com
303.866.0430

Randy Miller
Leader, Financial Services Group
randy.miller@hro.com
303.866.0572

Matt Smith
Senior Associate
matt.smith@hro.com
303.866.0464

Olympia Fay
Associate
olympia.fay@hro.com
415.268.1942

Jeff Whitney
Associate
jeff.whitney@hro.com
303.866.0576

Denver

Boulder

Colorado Springs

London

Los Angeles

Munich

Salt Lake City

San Francisco

June 22, 2007

HRO Alert

GOOD NEWS: U.S. SUPREME COURT ENFORCES STRICT PLEADING REQUIREMENT UNDER PRIVATE SECURITIES LITIGATION REFORM ACT

Yesterday, the U.S. Supreme Court announced its decision in *Tellabs, Inc v. Makor Issues & Rights Ltd* (No. 06-484). It is a welcome development for defendants facing securities fraud clams. The Supreme Court interpreted the Private Securities Litigation Reform Act of 1995 (the "PSLRA") and enforced the strict pleading standard for actions subject to the PSLRA.

The Court concluded that to determine whether a plaintiff's allegations regarding a defendant's culpability "can survive the threshold inspection for sufficiency, a court . . . must engage in a comparative evaluation; it must consider, not only inferences urged by the plaintiff, . . . but also competing inferences rationally drawn from the alleged facts." Previously, lower courts relied on a plaintiff-friendly standard where plaintiff's allegations were deemed sufficiently alleged if "a reasonable person could infer that the defendant acted with the required intent." Following this ruling, lower courts must now "consider plausible *non*culpable explanations for the defendants' conduct."

The *Tellabs* decision also clarifies the undefined "strong inference" standard which had previously divided federal courts of appeal. After reviewing Congress' intent behind the PSLRA and its goal of curbing frivolous, lawyer-driven litigation, the Court concluded that the "strong inference" standard includes a weighing of opposing inferences by both parties to determine if the allegations meet the requisite standard for pleading the defendant's culpability.

Be Heard.™