

# Index

## **ABSTENTION**

Defensive maneuvers, **20:3**

## **ACCOUNTING**

Demand for relief, shareholder's complaint, **19:21**

## **ADMINISTRATIVE RELIEF OR ASSISTANCE**

Generally, **11:1-11:18**

Calling for help, **11:1**

Equal Access to Justice Act, **11:18**

Federal administrative agencies, **11:2-11:15**

Parallel proceedings, **11:17**

Securities and Exchange Commission (SEC)

generally, **11:2**

enforcement actions

generally, **11:9**

ancillary relief, **11:12**

authority, source of, **11:9**

disgorgement, **11:11**

procedural advantages, additional, **11:13**

range of relief, **11:10**

using SEC enforcement in private civil litigation, **11:14**

informational use of SEC

confidentiality, requests for confidential treatment in required filings, **11:5**

discovering fruits of investigation, **11:4**

grand jury transcripts, **11:7**

persistence, **11:7**

routine corporate filings, **11:6**

SEC complaints, **11:6**

triggering investigation, **11:3**

State administrative agencies, **11:16**

## **ADMISSIONS**

Discovery, requests for admissions, **21:7**

## **ALLEGATIONS IN SHAREHOLDER COMPLAINTS**

See Commencement of Actions

## **ANTITAKEOVER STATUTES**

See State Antitakeover Statutes

## **APPRAISAL**

Demand for relief, shareholder's complaint, **19:15-19:17**

## **ARBITRATION**

Generally, **18:3-18:19**

Arbitrators, choosing, **18:15**

Availability, **18:4-18:11**

Demand for arbitration, **18:13**

Desirability, **18:19**

Discovery, **18:16**

Enforcement, **18:17**

Motion to stay civil proceeding, **18:14**

Racketeer Influenced and Corrupt Organizations Act (RICO), **3:25**

Remedies, **18:18**

Stockholders' derivative actions, **9:31**

Venue, **18:12**

## **ATTORNEY-CLIENT PRIVILEGE**

Discovery. See Discovery

Stockholders' derivative actions, **9:30**

## **ATTORNEY-CLIENT RELATIONSHIPS**

Generally, **17:1-17:6**

Attorney liability, **17:6**

Information, client as source of, **15:2, 17:2**

Instructing clients costs, **17:4**

emotional support, **17:5**

**ATTORNEY-CLIENT RELATIONSHIPS—Cont'd**  
Instructing clients—Cont'd  
goal clarification, 17:4  
law and procedure, 17:3  
strengthening will of client, 17:4

**ATTORNEYS**  
Disqualification, motion to disqualify  
counsel, 20:22

**ATTORNEY'S FEES**  
Class actions, 12:16  
Common-law wrongs, 10:40  
Defense motion for attorney's fees,  
20:19  
Demand for relief, shareholder's  
complaint, 19:24  
Racketeer Influenced and Corrupt  
Organizations Act (RICO), 3:20  
Rule 10b-5 private actions, 2:36  
Securities Act § 11, 5:19  
Securities Exchange Act § 9. See  
Securities Exchange Act §§ 9,  
16(b), 18(a)  
Securities Exchange Act § 16(b). See  
Securities Exchange Act §§ 9,  
16(b), 18(a)  
Stockholders' derivative actions, 9:36

**BENCH TRIAL**  
Generally, 22:2

**BLUE SKY LAWS**  
Generally, 8:2  
Advantages and disadvantages of  
blue sky litigation, 8:15  
Attorney's fees, 8:10  
Causation, 8:8  
Conflict of laws, 8:14  
Defendants, 8:5  
Defenses  
generally, 8:12  
statute of limitations, 8:13  
Elements of blue sky action  
causation, 8:8  
defendants, 8:5  
misrepresentations, material, 8:7  
omissions, material, 8:7  
parties liable, 8:5

**BLUE SKY LAWS—Cont'd**  
Elements of blue sky action—Cont'd  
reliance, 8:8  
scienter, 8:6  
"security," definition of, 8:4  
standing to sue, 8:3  
Limitations, 8:13  
Misrepresentations, material, 8:7  
Omissions, material, 8:7  
Parties liable, 8:5  
Punitive damages, 8:11  
Reliance, 8:8  
Remedies  
generally, 8:9  
attorney's fees, 8:10  
punitive damages, 8:11  
Sciencer, 8:6  
"Security," definition of, 8:4  
Standing to sue, 8:3  
Statute of limitations, 8:13  
Stay of federal actions, exceptional  
circumstances, 8:3

**BURDEN OF PROOF**  
Racketeer Influenced and Corrupt  
Organizations Act (RICO), 3:24

**BUSINESS JUDGMENT RULE**  
Generally, 16:1-16:10  
Arbitrary or capricious action, 16:7  
Attacks on business judgment rule  
generally, 16:3  
arbitrary or capricious action, 16:7  
candor, violation of duty of, 16:6  
failure to exercise due care, 16:4  
good faith, lack of, 16:5  
Breach of fiduciary duty, 10:19,  
10:20  
Candor, violation of duty of, 16:6  
Failure to exercise due care, 16:4  
Good faith, lack of, 16:5  
Nature of rule, 16:2  
Negligence, 10:37

**CAUSATION**  
Racketeer Influenced and Corrupt  
Organizations Act (RICO), 3:5  
Rule 10b-5 private actions, 2:23  
Securities Act § 17(a), 4:10

## INDEX

### CHECKLISTS

Racketeer Influenced and Corrupt Organizations Act (RICO), **3:26**

### CHOICE OF LAW

Stockholders' derivative actions, demand requirement, **9:15**

### CLASS ACTIONS

Generally, **12:1-12:16**

Attorney's fees, **12:16**

Certification

generally, **12:10**

motion to deny certification, **20:12**

Common question of law or fact, predominating, **12:6**

Discovery, **21:8**

Dismissal or compromise, **12:15**

Effect of judgment, **12:12**

Fair and adequate representation, **12:8**

Motion to deny certification, **20:12**

Notice requirements, **12:11**

Numerous class, **12:5**

Orders in class actions, **12:14**

Partial class actions, **12:13**

Rationale of class actions, **12:1**

Reform, **12:3**

Requirements for class actions

generally, **12:4**

common question of law or fact, predominating, **12:6**

fair and adequate representation, **12:8**

numerous class, **12:5**

superiority of class action over individual suits, **12:9**

typicality of representative's claims or defenses, **12:7**

Securities Litigation Uniform Standards Act (SLUSA), **12:3**

Superiority of class action over individual suits, **12:9**

Typicality of representative's claims or defenses, **12:7**

### CLOSE CORPORATIONS

Breach of fiduciary duty, **10:18**

### CLOSING ARGUMENTS

Trial, **22:6-22:11**

### COMMENCEMENT OF ACTIONS

Generally, **19:1-19:25**

Accounting, demand for relief, **19:21**

Appraisal, demand for relief, **19:15-19:17**

Attorney's fees, demand for relief, **19:24**

Client selection, choosing plaintiff, **19:3**

Complaints, allegations in shareholder complaints

identification of parties, **19:7**

jurisdictional allegations, **19:5**

procedural allegations, **19:6**

substantive allegations, **19:8**

Damages, demand for relief, **19:14**

Declaratory relief, demand for relief, **19:13**

Defendant selection, **19:4**

Demand for relief

accounting, **19:21**

appraisal, **19:15-19:17**

attorney's fees, **19:24**

damages, **19:14**

declaratory relief, **19:13**

dissolution, **19:11**

fair value determinations, **19:16**

injunction, **19:10**

jurisdiction and procedure for appraisal, **19:17**

mandamus, **19:20**

provisional director, appointment of, **19:25**

punitive damages, **19:23**

quo warranto, **19:22**

receivership, **19:12**

remedies, choice of, **19:9**

removal of director, **19:25**

rescission, **19:18**

specific performance, **19:19**

Dissolution, demand for relief, **19:11**

Fair value determinations, **19:16**

Forum choice, **19:2**

Injunction, demand for relief, **19:10**

Jurisdiction and procedure for appraisals, **19:17**

**COMMENCEMENT OF ACTIONS****—Cont'd**

- Mandamus, demand for relief, **19:20**
- Provisional director, demand for appointment of, **19:25**
- Punitive damages, demand for relief, **19:23**
- Quo warranto, demand for relief, **19:22**
- Receivership, demand for relief, **19:12**
- Remedies, choice of, **19:9**
- Removal of director, demand for relief, **19:25**
- Rescission, demand for relief, **19:18**
- Specific performance, demand for relief, **19:19**

**COMMON-LAW WRONGS AND REMEDIES**

- Generally, **10:1-10:45**
- Breach of fiduciary duty
  - generally, **10:2 et seq.**
  - business judgment rule, **10:19**
    - generally, **10:19**
    - burden of proof, **10:20**
  - close corporations, **10:18**
  - corporate control battles, **10:12**
  - corporate perquisites, **10:11**
  - defendants, **10:9**
  - defenses, **10:19, 10:20**
  - directors
    - liability, limiting or eliminating, **10:4**
    - rationale for protecting directors, **10:5**
    - takeovers, fiduciary duty of board where control change implicated, **10:17**
  - exculpatory provisions, **10:3**
  - expansion of remedies, legislative response, **10:3**
  - fiduciary duty, **10:3, 10:6**
  - jurisdiction, subject matter, **10:8**
  - maneuvers
    - disloyal maneuvers, **10:14**
    - entrenchment maneuvers, **10:15, 10:16**
    - political maneuvers, **10:12**

**COMMON-LAW WRONGS AND REMEDIES—Cont'd**

- Breach of fiduciary duty—Cont'd
  - maneuvers—Cont'd
    - punitive maneuvers, **10:13**
    - selfish maneuvers, **10:11**
    - terminal maneuvers, **10:15**
  - parties liable, **10:9**
  - punitive damages, **10:22**
  - remedies, **10:22**
  - self-interested behavior, **10:14**
  - spiteful acts, **10:13**
  - standing to sue, **10:7**
  - substantive wrongs, **10:10**
  - takeovers, fiduciary duty of board where control change implicated, **10:17**
  - unequal treatment, **10:12**
  - visitorial powers doctrine, **10:8**
- Business judgment rule, breach of fiduciary duty, **10:19**
- Fraud
  - generally, **10:23-10:33**
  - compensatory damages, **10:31**
  - consequential damages, **10:32**
  - damages
    - compensatory damages, **10:31**
    - consequential damages, **10:32**
    - punitive damages, **10:33**
  - defendants, **10:28**
  - defenses, **10:29**
  - elements of liability, **10:24**
  - estoppel, **10:29**
  - in pari delicto, **10:29**
  - limitations, **10:29**
  - nature of action, **10:23**
  - parties liable, **10:28**
  - punitive damages, **10:33**
  - ratifications, **10:29**
  - reliance, **10:26**
  - remedies, **10:30-10:38**
  - scienter, **10:25**
  - statute of limitations, **10:29**
  - substantive wrongs, **10:27**
- Negligence
  - generally, **10:34 et seq.**
  - business judgment rule, **10:37**
  - defenses, **10:37**

## INDEX

**COMMON-LAW WRONGS AND REMEDIES—Cont'd**  
Negligence—Cont'd  
    direct or derivative actions, **10:38**  
    duty and breach, **10:34**  
    examples, **10:35**  
    nature of action, **10:34**  
    standard of care, **10:36**  
Remedies, miscellaneous  
    attorney's fees, **10:40**  
    breach of contract, **10:41**  
    intentional infliction of emotional distress, **10:44**  
    mandamus, use for discovery, **10:43**  
    punitive damages, **10:39**  
    statute of frauds, **10:42**  
    tortious interference with contract or prospective business advantage, **10:45**

**COMPLAINTS**  
See Commencement of Actions; Defensive Maneuvers

**CONFLICT OF LAWS**  
Blue sky laws, **8:14**  
Stockholders' derivative actions, demand requirement, **9:15**

**CONSPIRACY**  
Racketeer Influenced and Corrupt Organizations Act (RICO), **3:18**

**CONTRACTS**  
Breach of contract, **10:41**  
Tortious interference with contract, **10:45**

**CONTRIBUTION**  
Rule 10b-5 private actions, **2:34**  
Securities Act § 11. See Securities Act §§ 11 and 12(2).  
Securities Act § 12(2). See Securities Act §§ 11 and 12(2).

**CORPORATE RECORDS**  
See Information and Corporate Secrecy

**CORPORATE VEIL**  
Generally, **16:8**

**CORPORATE VEIL—Cont'd**  
Piercing the corporate veil, special issues, **16:9**  
Reverse piercing, **16:10**

**COSTS**  
See also Litigation Costs  
Derivative actions. See Stockholders' Derivative Actions  
Securities Exchange Act § 9, **6:10**  
Security for expenses, motion for, **20:18**

**COUNTERCLAIMS**  
Generally, **20:21**

**CROSSCLAIMS**  
Generally, **20:21**

**CROWDFUNDING**  
Securities Exchange Act of 1934 § 14, capital raising technique, **7:6**

**DAMAGES**  
Demand for relief, shareholder's complaint, **19:14**  
Fraud. See Common-Law Wrongs and Remedies  
Racketeer Influenced and Corrupt Organizations Act (RICO), **3:19**  
Rule 10b-5. See Rule 10b-5 Private Actions  
Securities Exchange Act § 9, **6:9**

**DECLARATORY JUDGMENTS**  
Defensive maneuvers, **20:24**  
Demand for relief, shareholder's complaint, **19:13**

**DEFENDANTS**  
Breach of fiduciary duty, **10:9**  
Commencement of actions, defendant selection, **19:4**  
Fraud, **10:28**  
RICO. See Racketeer Influenced and Corrupt Organizations Act (RICO)  
Securities Act § 17(a), **4:6**  
Securities Act § 11. See Securities Act §§ 11 and 12(2).

**DEFENDANTS—Cont'd**

Securities Act § 12(2). See Securities Act §§ 11 and 12(2).  
Securities Exchange Act § 9. See Securities Exchange Act §§ 9, 16(b), 18(a)  
Securities Exchange Act § 14, misleading proxy solicitations, **7:10**  
Securities Exchange Act § 16(b). See Securities Exchange Act §§ 9, 16(b), 18(a)

**DEFENSES**

See also Defensive Maneuvers  
Breach of fiduciary duty, **10:19**  
Derivative actions. See Stockholders' Derivative Actions  
RICO. See Racketeer Influenced and Corrupt Organizations Act (RICO)  
Rule 10b-5. See Rule 10b-5 Private Actions  
Securities Act § 17(a). See Securities Act § 17(a)  
Securities Exchange Act § 16(b), **6:20**

**DEFENSIVE MANEUVERS**

See also Defenses  
Generally, **20:1-20:24**  
Abstention, **20:3**  
Attack on judgment, motions under Rule 60(b), **20:23**  
Attorney's fees, motion for, **20:19**  
Baseless or bad faith complaint, motion to strike, **20:9**  
Class action, motion to deny certification, **20:12**  
Complaint, attack on. Motion practice, below  
Concession, attack by buying out plaintiffs, **20:16**  
offering judgment under Rule 68, **20:17**  
Crossclaims, **20:21**  
Declaratory judgment, actions for, **20:24**  
Discovery sanctions, motion for, **20:20**

**DEFENSIVE MANEUVERS**

—Cont'd

Dismiss, motion to, **20:7, 20:10, 20:13**  
Disqualification, motion to disqualify counsel, **20:22**  
Failure to state a claim, motion to dismiss, **20:10**  
Forum non conveniens, **20:4**  
Joinder of parties, defensive maneuvers, **20:5**  
Jury demand, motion attacking, **20:15**  
More definite statement, motion for, **20:7**  
Motion practice  
abstention, **20:3**  
attorney's fees, motion for, **20:19**  
baseless or bad faith complaint, motion to strike, **20:9**  
class action, motion to deny certification, **20:12**  
complaint, attack on  
baseless or bad faith complaint, motion to strike, **20:9**  
dismiss, motion to, **20:7, 20:10**  
failure to state a claim, motion to dismiss, **20:10**  
more definite statement, motion for, **20:7**  
particularity, motion attacking lack of, **20:7**  
scandalous or immaterial matter, motion to strike, **20:8**  
strike, motions to, **20:8, 20:9**  
derivative actions  
motions to stay, **20:14**  
unfair or inadequate representation, motion to dismiss, **20:13**  
discovery sanctions, motion for, **20:20**  
dismiss, motion to, **20:7, 20:10, 20:13**  
failure to state a claim, motion to dismiss, **20:10**  
forum non conveniens, **20:4**  
joinder of parties, attack on, **20:5**

## INDEX

### DEFENSIVE MANEUVERS

#### —Cont'd

Motion practice—Cont'd  
jury demand, motion attacking,  
**20:15**  
more definite statement, motion  
for, **20:7**  
particularity, motion attacking lack  
of, **20:7**  
personal jurisdiction, attack on,  
**20:4, 20:5**  
scandalous or immaterial matter,  
motion to strike, **20:8**  
security for expenses, motion for,  
**20:18**  
strike, motions to, **20:8, 20:9**  
subject matter jurisdiction, attack  
on, **20:2**  
summary judgment, motion for,  
**20:11**  
venue, attack on, **20:6**  
Particularity, motion attacking lack  
of, **20:7**  
Personal jurisdiction, attack on, **20:4,**  
**20:5**  
Scandalous or immaterial matter,  
motion to strike, **20:8**  
Security for expenses, motion for,  
**20:18**  
Strike, motions to, **20:8, 20:9**  
Subject matter jurisdiction, attack on,  
**20:2**  
Summary judgment, motion for,  
**20:11**  
Venue, attack on, **20:6**

### DEFINITIONS

RICO. See Racketeer Influenced and  
Corrupt Organizations Act  
(RICO)  
"Security," Rule 10b-5 private  
actions, **2:10**

### DEMAND FOR RELIEF

See Commencement of Actions

### DEPOSITIONS

See discovery

### DERIVATIVE ACTIONS

See Stockholders' Derivative Actions

### DIRECTORS

Breach of fiduciary duty. See Com-  
mon-Law Wrongs and Remedies  
Insider trading, Securities Exchange  
Act § 16(b), director by  
deputization, **6:18**  
Provisional director, demand in  
shareholder's complaint for  
appointment of, **19:25**  
Removal of director, demand for  
relief in shareholder's com-  
plaint, **19:25**

### DISCOVERY

Generally, **21:1-21:21**  
Admissions, requests for, **21:7**  
Arbitration, **18:16**  
Attorney-client privilege  
generally, **21:9**  
abrogation, **21:10 et seq.**  
client, who is, **21:15**  
confidence, communication made  
in, **21:14**  
disclosure of privileged materials,  
**21:17**  
not "legal" advice, **21:11**  
purposes for communication non-  
legal, **21:13**  
waiver, **21:16, 21:18**  
wrongdoer, lawyer as, **21:12**  
Class actions, **21:8**  
Defensive maneuvers, **20:20**  
Depositions  
timing tactics, **21:2**  
written questions, depositions on,  
**21:4**  
Internal investigations, **21:21**  
Interrogatories, **21:5**  
Mandamus, **10:43**  
Options, **21:1**  
Production of documents, requests  
for, **21:6**  
Protective orders, **21:20**  
Sanctions, motion for, **20:20**  
Stays of discovery, **21:3**  
Stipulations, **21:20**  
Stockholders' derivative actions, **9:29**  
Tactics, **21:2**  
Work-product doctrine, **21:19**

**DISCOVERY—Cont'd**

Written questions, depositions on, **21:4**

**DISGORGEMENT**

SEC enforcement actions, **11:11**

**DISMISSAL**

See also Defensive Maneuvers

Class actions, **12:15**

Stockholders' derivative actions, **9:32**

**DISQUALIFICATION**

Attorneys, motion to disqualify counsel, **20:22**

**DISSOLUTION**

Demand for relief, shareholder's complaint, **19:11**

**ENTERPRISE LIABILITY**

See Racketeer Influenced and Corrupt Organizations Act (RICO)

**EQUAL ACCESS TO JUSTICE ACT**

Generally, **11:18**

**EQUITY**

Racketeer Influenced and Corrupt Organizations Act (RICO), availability of private equitable relief, **3:21**

**ESTOPPEL**

See also Time: Limitations, Laches, and Estoppel

Fraud, **10:29**

**ETHICS**

Stockholders' derivative actions, ethics and representation of defendants, **9:27**

**FAILURE TO STATE A CLAIM**

Motion to dismiss, **20:10**

**FALSE FILINGS**

Misleading statements in SEC filings, Securities Exchange Act § 18(a)

**FEDERAL ACTIONS FOR FRAUD**

Generally, **2:1 et seq.**

Direct or derivative actions, **2:2**

Express federal remedies. See Securities Act §§ 11 and 12(2)

**FEDERAL ACTIONS FOR FRAUD**

**—Cont'd**

Implied private remedies, **2:5**

Mail and wire fraud, **2:4**

Proxy solicitations. See Securities Exchange Act § 14

Racketeering statutes

generally, **2:3**

mail and wire fraud, **2:4**

Rule 10b-5. See Rule 10b-5 Private Actions

Securities fraud provisions, **2:1**

Tender offers. See Securities Exchange Act § 14

Wire fraud, **2:4**

**FORUM NON CONVENIENS**

Stockholders' derivative actions, **9:10**

**FRAUD**

See also Common-Law Wrongs and Remedies; Federal Actions for Fraud

Express federal remedies. See Securities Act §§ 11 and 12(2)

Proxy solicitations. See Securities Exchange Act § 14

Rule 10b-5. See Rule 10b-5 Private Actions

Securities Act § 17(a). See Securities Act § 17(a)

Tender offers. See Securities Exchange Act § 14

**FRAUD ON THE MARKET**

**THEORY**

Rule 10b-5 private actions, **2:22**

**FREEDOM OF INFORMATION ACT**

Information and corporate secrecy, **15:13**

**GOOD FAITH**

Business judgment rule. See Business Judgment Rule

Racketeer Influenced and Corrupt Organizations Act (RICO), defense, **3:22**

## INDEX

### IMPLIED PRIVATE REMEDIES

Federal actions for fraud, generally, **2:5**  
Securities Act § 17(a), **4:4**

### IN PARI DELICTO

Fraud, **10:29**  
Rule 10b-5 private actions, **2:30**

### INCOME TAX RETURNS

Information and corporate secrecy, **15:5**

### INDEMNITY

Rule 10b-5 private actions, **2:34**  
Securities Act § 11. See Securities Act §§ 11 and 12(2).  
Securities Act § 12(2). See Securities Act §§ 11 and 12(2).  
Stockholders' derivative actions, indemnification of officers and directors, **9:37**

### INFORMATION AND CORPORATE SECRECY

See also Administrative Relief or Assistance

Generally, **15:1-15:15**

Clients as sources of information, **15:2, 17:2**

Corporate records

    director's right to inspect, **15:10**  
    judicial enforcement of shareholders' right to review, **15:9**  
    statutory and common law rights to review, **15:8**

Defendants as sources of information, **15:3**

Ex-employees as sources of information, **15:4**

Federal Securities Act filings, **15:6**

Financial sources, **15:11**

Freedom of Information Act, **15:13**

Importance of information, **15:1**

Income tax returns, **15:5**

Investigative fruits, **15:14**

Legal audits, **15:15**

Sources of information

    clients, **15:2**  
    corporate records, above  
    defendants, **15:3**

### INFORMATION AND CORPORATE SECRECY

#### —Cont'd

Sources of information—Cont'd  
    ex-employees, **15:4**  
    federal Securities Act filings, **15:6**  
    financial sources, **15:11**  
    Freedom of Information Act, **15:13**  
    income tax returns, **15:5**  
    state administrative filings, **15:7**  
    unexpected sources, **15:12**  
    State administrative filings, **15:7**

### INJUNCTIONS

Demand for relief, shareholder's complaint, **19:10**  
Securities Exchange Act § 14, misleading tender offers, **7:32**

### INSIDER TRADING

Rule 10b-5. See Rule 10b-5 Private Actions  
Section 16(b). See Securities Exchange Act §§ 9, 16(b), 18(a)

### INTERNAL INVESTIGATIONS

Discovery, **21:21**

### INTERROGATORIES

Discovery, **21:5**

### INTERSTATE COMMERCE

Rule 10b-5 private actions, **2:8**  
Securities Act § 17(a), **4:14**

### JOINDER OF PARTIES

Defensive maneuvers, **20:5**

### JUDGMENTS

Attack on judgment, motions under Rule 60(b), **20:23**

### JURISDICTION

See also Personal Jurisdiction; Subject Matter Jurisdiction  
Breach of fiduciary duty, **10:8**  
Derivative actions. See Stockholders' Derivative Actions  
Pendent jurisdictions, Rule 10b-5. See Rule 10b-5 Private Actions  
Securities Act § 12(2), **5:3**  
Securities Exchange Act § 9, **6:7**

**JURISDICTION—Cont'd**

Venue  
Misleading proxy Solicitations, **7:9**

**JURY TRIAL**

Election, **22:2**  
Jury demand, motion attacking,  
**20:15**  
Selection of jury, **22:3**  
Stockholders' derivative actions, right  
to jury trial, **9:20**

**LACHES**

See also Time: Limitations, Laches,  
and Estoppel  
Rule 10b-5 private actions, **2:28**

**LEGAL AUDITS**

Information and corporate secrecy,  
**15:15**

**LIABILITY INSURANCE**

Stockholders' derivative actions,  
liability insurance for officers  
and directors, **9:38**

**LIABILITY OF STATE  
REGULATORS**

Losses by investors, **8:5**

**LIMITATIONS**

See also Time: Limitations, Laches,  
and Estoppel  
Fraud, **10:29**  
Insider trading, Securities Exchange  
Act § 16(b), **6:21**  
Racketeer Influenced and Corrupt  
Organizations Act (RICO), **3:23**  
Rule 10b-5 private actions, **2:28**  
Securities Exchange Act § 14,  
misleading proxy solicitations,  
**7:12**

**LITIGATION COSTS**

Generally, **14:1-14:4**  
Attorney-client relationships,  
instructing clients as to costs,  
**17:4**  
Client preparation, **14:2**  
Distributing monetary burden, **14:4**  
Shifting monetary burden, **14:3**

**MAILS**

Federal actions for fraud, mail and  
wire fraud, **2:4**  
Securities Act § 17(a), **4:14**

**MANDAMUS**

Demand for relief, shareholder's  
complaint, **19:20**  
Discovery, **10:43**

**MANIPULATIVE OR DECEPTIVE  
PRACTICES**

Market manipulation, Securities  
Exchange Act § 9, **6:2-6:10**  
Rule 10b-5 private actions, **2:19**

**MEDIATION**

Nonjudicial remedies, **18:20**

**MERGERS**

Time, state statutory requirements,  
**13:4**

**MISAPPROPRIATION**

Insider trader liability, **2:18**

**MITIGATION**

Rule 10b-5 private actions, duty to  
mitigate damages, **2:33**

**MORE DEFINITE STATEMENT**

Motion for more definite statement,  
**20:7**

**MOTION PRACTICE**

See Defensive Maneuvers

**MOTION TO STAY CIVIL  
PROCEEDING**

Arbitration pending, **18:14**

**NEGLIGENCE**

See Common-Law Wrongs and Rem-  
edies

**NONJUDICIAL REMEDIES**

Generally, **18:1-18:23**  
Arbitration. See Arbitration  
Litigation drawbacks, **18:1**  
Mediation, **18:20**  
Pretrial settlement, **18:21, 18:22**  
Pretrial settlements. See Settlements  
Velvet-hammer letter, **18:2**

## INDEX

### OFFICERS AND DIRECTORS

See also Directors  
Derivative actions. See Stockholders' Derivative Actions

### OMISSIONS

Prospectuses and communications, Securities Act § 12(2), **5:5**  
Proxy solicitations, Securities Exchange Act § 14, **7:4**  
Rule 10b-5 private actions, **2:21**  
Securities Act § 17(a), **4:9**  
Tender offers, Securities Exchange Act § 14, **7:24, 7:25**

### OPENING STATEMENT

Trial, **22:4**

### OPPRESSION

Generally, **1:1 et seq.**  
Citadels of oppressive power, **1:5**  
Comforting oppressed generally, **1:6**  
strategy and tactics, **1:7**  
Remedies, **1:4**  
Strategy and tactics, **1:7**  
Wrongs, **1:3**

### PARTIES LIABLE

Defendants. See Defendants  
Securities Exchange Act § 14, misleading proxy solicitations, **7:10**

### PENDANT JURISDICTIONS

Rule 10b-5. See Rule 10b-5 Private Actions

### PERSONAL JURISDICTION

Defense attack on personal jurisdiction, **20:4, 20:5**  
Stockholders' derivative actions, **9:8**

### POISON PILLS

Securities Exchange Act of 1934 § 14, defenses, **7:29**

### PRESUMPTIONS

Business judgment rule. See Business Judgment Rule  
Corporate veil. See Corporate Veil

### PRETRIAL SETTLEMENT

Nonjudicial remedies, **18:21, 18:22**  
Tactical considerations, **18:22**

### PRETRIAL SETTLEMENTS

See Settlements

### PRODUCTION OF DOCUMENTS

Discovery, requests for production, **21:6**

### PROSPECTIVE BUSINESS ADVANTAGE

Tortious interference with prospective business advantage, **10:45**

### PROSPECTUSES AND COMMUNICATIONS, SECURITIES ACT § 12(2)

See Securities Act §§ 11 and 12(2)

### PROTECTIVE ORDERS

Discovery, **21:20**

### PROVISIONAL DIRECTOR

Demand for relief, shareholder's complaint, **19:25**

### PROXY SOLICITATIONS

Fraud. See Securities Exchange Act § 14

### PUNITIVE DAMAGES

Breach of fiduciary duty, **10:22**  
Common-law wrongs, **10:39**  
Demand for relief, shareholder's complaint, **19:23**  
Fraud, common law, **10:33**  
Rule 10b-5 private actions, **2:35**  
Securities Exchange Act § 16(b), **6:19**  
Stockholders' derivative actions, **9:35**  
Tender offers, misleading, **7:34**

### QUO WARRANTO

Demand for relief, shareholder's complaint, **19:22**

### RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)

Generally, **3:1-3:27**  
Arbitration, **3:25**

**RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)—Cont'd**

- Attorney fees, 3:20
- Burden of proof, 3:24
- Causation, defendants, 3:5
- Checklist, 3:26
- Conducting or participating in enterprise, 3:17
- Conspiracy, 3:18
- Damages, 3:19
- Defendants
  - generally, 3:4
  - causation, 3:5
  - enterprise liability, 3:8
  - standing, 3:5
- Defenses
  - good faith defense, 3:22
  - statute of limitations, 3:23
- Definitions
  - generally, 3:9
  - enterprise, 3:11
  - person, 3:10
  - racketeering activity, 3:12
- Elements of RICO, racketeering activity, 3:6
- Enterprise, definition, 3:11
- Enterprise liability
  - generally, 3:7
  - defendants, 3:8
  - enterprise, definition, 3:11
  - respondeat superior, 3:8
  - secondary liability, 3:8
- Equity, availability of private equitable relief, 3:21
- Good faith defense, 3:22
- History and purpose of RICO, 3:2
- Interest in racketeering activity, acquiring or maintaining, 3:16
- Limitations, 3:23
- Money derived from racketeering activity, using or investing, 3:15
- Pattern of racketeering activity, 3:13
- Person, definition, 3:10
- Private equitable relief, availability of, 3:21
- Process, 3:3

**RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)—Cont'd**

- Racketeering activity
  - definition, 3:12
  - elements of RICO, 3:6
  - pattern of racketeering activity, 3:13
- Remedies
  - attorney fees, 3:20
  - damages, 3:19
  - equity, availability of private equitable relief, 3:21
- Respondeat superior, enterprise liability, 3:8
- Secondary liability, enterprise liability, 3:8
- Section 1962, prohibited activities generally, 3:14
  - conducting or participating in enterprise, 3:17
  - conspiracy, 3:18
  - interest in racketeering activity, acquiring or maintaining, 3:16
  - money derived from racketeering activity, using or investing, 3:15
- Standing, defendants, 3:5
- State "little RICO" statutes, 3:27
- Statute of limitations, 3:23
- Venue, 3:3

## RACKETEERING

- Federal actions for fraud, statutes generally, 2:3, 2:4
- RICO. See Racketeer Influenced and Corrupt Organizations Act (RICO)

## RATIFICATIONS

- Fraud, 10:29

## RECEIVERSHIPS

- Demand for relief, shareholder's complaint, 19:12

## RECORDS

- See Information and Corporate Secrecy

## INDEX

### REGISTRATION STATEMENTS, SECURITIES ACT § 11

See Securities Act §§ 11 and 12(2)

### REMAND

State statutory remedies, 8:22

### REMEDIES

See also Administrative Relief or Assistance; Common-Law Wrongs and Remedies; Nonjudicial Remedies

Generally, 1:4

Arbitration, 18:18

Proxy solicitations, misleading, 7:13  
*et seq.*

RICO. See Racketeer Influenced and Corrupt Organizations Act (RICO)

Rule 10b-5. See Rule 10b-5 Private Actions

Securities Act § 11. See Securities Act §§ 11 and 12(2).

Securities Act § 12(2). See Securities Act §§ 11 and 12(2).

Securities Act § 17(a). See Securities Act § 17(a)

Tender offers, misleading, 7:31 *et seq.*

### RESCISSON

Demand for relief, shareholder's complaint, 19:18

Securities Exchange Act § 14, misleading tender offers, 7:33

### RESPONDEAT SUPERIOR

Racketeer Influenced and Corrupt Organizations Act (RICO), enterprise liability, 3:8

### RICO

See Racketeer Influenced and Corrupt Organizations Act (RICO)

### RULE 10B-5 PRIVATE ACTIONS

Generally, 2:6 *et seq.*

Attorney's fees, 2:36

Causation, 2:23

Contribution, 2:34

Damages

generally, 2:32

### RULE 10B-5 PRIVATE ACTIONS

#### —Cont'd

Damages—Cont'd  
contribution, 2:34  
duty to mitigate, 2:33  
indemnity, 2:34  
punitive damages, 2:35

Defenses

generally, 2:27  
estoppel, 2:29  
in pari delicto, 2:30  
knowledge, 2:29  
laches, 2:28  
limitations, 2:28  
misconduct of plaintiff, 2:30  
past adjudication, 2:31  
ratification, 2:29  
unclean hands, 2:30  
untimeliness, 2:28  
waiver, 2:29

Elements of liability

generally, 2:6  
violation elements, below

Fraud on the market theory, 2:22

"In connection with," 2:26

Indemnity, 2:34

Insider trader liability

generally, 2:15  
amplification on duty to disclose, 2:16  
misappropriation theory, 2:18  
Sarbanes-Oxley, enhanced liability under, 2:17

Interstate commerce, means or instrumentalities, 2:8

Laches, 2:28

Limitations, 2:28

Manipulative or deceptive practices, 2:19

Materiality, 2:22

Misappropriation theory, insider trader liability, 2:18

Misrepresentations, 2:21

Mitigation, duty to mitigate damages, 2:33

Omissions, 2:21

Path around disclosure violation requirement, 2:20

**RULE 10B-5 PRIVATE ACTIONS****—Cont'd**

- Pendent jurisdictions
  - generally, **2:13**
  - parties liable, **2:14**
- Private remedy, jurisdiction and origins, **2:7**
- Punitive damages, **2:35**
- "Purchase or sale," **2:25**
- Reliance, **2:22**
- Remedies
  - attorney's fees, **2:36**
  - damages, above
- Sale of business through stock transfer, **2:11**
- Sarbanes-Oxley, enhanced insider trader liability under, **2:17**
- Scienter, **2:24**
- Securities Act § 17(a), Rule 10b-5 compared
  - "Security," definition, **2:10**
  - Service of process, **2:12**
  - Standing to sue, **2:9**
  - Threshold considerations
    - interstate commerce, means or instrumentalities, **2:8**
    - sale of business through stock transfer, **2:11**
    - "security," definition, **2:10**
    - service of process, **2:12**
    - standing to sue, **2:9**
    - venue, **2:12**
  - Venue, **2:12**
  - Violation elements
    - causation, **2:23**
    - fraud on the market theory, **2:22**
    - "in connection with," **2:26**
    - manipulative or deceptive practices, **2:19**
    - materiality, **2:22**
    - misrepresentations, **2:21**
    - omissions, **2:21**
    - path around disclosure violation requirement, **2:20**
    - "purchase or sale," **2:25**
    - reliance, **2:22**
    - scienter, **2:24**

**SARBANES-OXLEY**

- Rule 10b-5, enhanced insider trader liability under Sarbanes-Oxley, **2:17**
- Statute of limitations, **2:28**

**SCANDALOUS OR IMMATERIAL MATTER**

- Motion to strike, **20:8**

**SCIENTER**

- Fraud, common law, **10:25**
- Rule 10b-5 private actions, **2:24**
- Securities Act § 12(2), **5:7**
- Securities Act § 17(a), **4:7**
- Securities Exchange Act § 9. See Securities Exchange Act §§ 9, 16(b), 18(a)
- Securities Exchange Act § 16(b). See Securities Exchange Act §§ 9, 16(b), 18(a)

**SECONDARY LIABILITY**

- Racketeer Influenced and Corrupt Organizations Act (RICO), enterprise liability, **3:8**

**SECRECY**

- See Information and Corporate Secrecy

**SECTION 1962**

- See Racketeer Influenced and Corrupt Organizations Act (RICO)

**SECURITIES ACT OF 1933 § 17(A)**

- Generally, **4:1-4:15**
- Attorney's fees, **4:18**
- Causation, **4:10**
- Costs, **4:18**
- Defendants, **4:6**
- Defenses
  - generally, **4:15**
- Elements of violation
  - causation, **4:10**
  - fraudulent practices, **4:11**
  - "in the offer of sale," **4:13**
  - interstate commerce or mails, use of, **4:14**
  - materiality of misstatement or omission, **4:9**
  - offer or sale, **4:12**

## INDEX

### SECURITIES ACT OF 1933 § 17(A)

#### —Cont'd

- Fraudulent practices, **4:11**
- Implied private remedy, **4:4**
- “In the offer of sale,” **4:13**
- Interstate commerce or mails, use of, **4:14**
- Liable parties, **4:6**
- Mails or interstate commerce, use of, **4:14**
- Materiality of misstatement or omission, elements of violation, **4:9**
- Misstatement, **4:9**
- Offer or sale
  - generally, **4:12**
  - “in the offer of sale,” **4:13**
- Omission, **4:9**
- Privity, **4:8**
- Purpose, **4:2**
- Remedies
  - attorney’s fees, **4:18**
  - costs, **4:18**
- Rule 10b-5, Section 17(a) compared with, **4:3**
- Sciencer, **4:7**
- Scope of protection, **4:5**
- Terms, **4:2**
- Threshold considerations
  - defendants, **4:6**
  - liable parties, **4:6**
  - privity, **4:8**
  - sciencer, **4:7**
  - scope of protection, **4:5**

### SECURITIES ACT OF 1933 § 12(2)

See Securities Act §§ 11 and 12(2)

### SECURITIES ACT OF 1933 §§ 11 AND 12(2)

Generally, **5:1-5:20**

Attorney’s fees, Securities Act § 11, **5:19**

Contribution

prospectuses and communications, Securities Act § 12(2), **5:10**  
registration statements, Securities Act § 11, **5:20**

Costs, Securities Act § 11, **5:19**

Damages, Securities Act § 11, **5:18**

### SECURITIES ACT OF 1933 §§ 11 AND 12(2)—Cont'd

- Defendants
  - prospectuses and communications, Securities Act § 12(2), **5:8**
  - registration statements, Securities Act § 11, **5:16**
- Defenses
  - prospectuses and communications, Securities Act § 12(2), **5:9**
  - registration statements, Securities Act § 11, **5:17**
- Indemnity
  - prospectuses and communications, Securities Act § 12(2), **5:10**
  - registration statements, Securities Act § 11, **5:20**
- Jurisdiction, Securities Act § 12(2), **5:3**
- Material misrepresentations and omissions, Securities Act § 12(2), **5:5**
- Omissions, Securities Act § 12(2), **5:5**
- Parties liable
  - prospectuses and communications, Securities Act § 12(2), **5:8**
  - registration statements, Securities Act § 11, **5:16**
- Privity, Securities Act § 12(2), **5:6**
- Prospectuses and communications, Securities Act § 12(2)
  - generally, **5:2 et seq.**
  - contribution, **5:10**
  - defendants, **5:8**
  - defenses, **5:9**
  - indemnity, **5:10**
  - jurisdiction, **5:3**
  - material misrepresentations and omissions, **5:5**
  - parties liable, **5:8**
  - privity, **5:6**
  - remedies, **5:11**
  - sciencer, **5:7**
  - standing to sue, **5:4**
  - tax offset rule, **5:12**
- Registration statements, Securities Act § 11
  - generally, **5:13 et seq.**

**SECURITIES ACT OF 1933 §§ 11 AND 12(2)—Cont'd**

Registration statements, Securities Act § 11—Cont'd  
 attorney's fees, 5:19  
 contribution, 5:20  
 costs, 5:19  
 damages, 5:18  
 defenses, 5:17  
 elements of action, 5:14  
 indemnity, 5:20  
 parties liable, 5:16  
 remedies, 5:18  
 standing to sue, 5:15

Remedies  
 prospectuses and communications, Securities Act § 12(2), 5:11  
 registration statements, Securities Act § 11, 5:18

Scienter, Securities Act § 12(2), 5:7

Securities Act § 11. Registration statements, Securities Act § 11, above

Securities Act § 12(2). Prospectuses and Communications, Securities Act § 12(2), above

Standing to sue  
 prospectuses and communications, Securities Act § 12(2), 5:4  
 registration statements, Securities Act § 11, 5:15

Tax offset rule, Securities Act § 12(2), 5:12

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

See Administrative Relief Or Assistance

**SECURITIES EXCHANGE ACT OF 1934 § 14**

Generally, 7:1-7:36  
 Attorney's fees  
 proxy solicitations, misleading, 7:14  
 tender offers, misleading, 7:34  
 Crowdfunding, capital raising technique, 7:6

proxy solicitations, misleading, 7:10  
 tender offers, misleading, 7:28 et seq.

Jurisdiction and Venue, 7:9

Omissions  
 proxy solicitations, misleading, 7:4  
 tender offers, misleading, 7:24, 7:25

Proxy solicitations, misleading  
 administrative remedies, 7:13  
 attorney's fees, 7:14  
 causation, 7:7  
 costs, 7:14  
 crowdfunding, 7:6  
 defendants, 7:10  
 defenses, 7:10  
 elements of section 14(a) action  
 defendants, 7:10  
 material fact, 7:5  
 misstatements, 7:4  
 omissions, 7:4  
 parties liable, 7:10  
 scienter, 7:11

elements of Section 14(a) action  
 causation, 7:7  
 injury, 7:7  
 proxy solicitation by subject company, 7:3  
 standing, 7:8  
 expenses, 7:14  
 injury, 7:7  
 limitations, 7:12  
 material fact, 7:5  
 misstatements, 7:4  
 omissions, 7:4  
 parties liable, 7:10  
 private remedies, 7:13  
 proxy solicitation by subject company, 7:3  
 punitive damages, 7:15  
 remedies  
 administrative remedies, 7:13  
 attorney's fees, 7:14  
 costs, 7:14

## INDEX

**SECURITIES EXCHANGE ACT OF 1934 § 14—Cont'd**

- Proxy solicitations, misleading
  - Cont'd
  - remedies—Cont'd
    - expenses, 7:14
    - private remedies, 7:13
    - punitive damages, 7:15
  - scienter, 7:11
  - Section 14(a) and rules thereunder, 7:2 *et seq.*
  - standing, 7:8
  - statutes of limitations, 7:12
- Remedies
  - proxy solicitations, misleading, 7:13 *et seq.*
  - tender offers, misleading, 7:31 *et seq.*
- Rule 13e-4 and "going private," misleading tender offers, 7:36
- Scienter
  - proxy solicitations, misleading, 7:11
  - tender offers, misleading, 7:23
- Standing
  - proxy solicitations, misleading, 7:8
  - tender offers, misleading, 7:21
- Statutes of limitations, misleading
  - proxy solicitations, 7:12
- Tender offers, misleading
  - attorney's fees, 7:34
  - causation, 7:27
  - compensatory damages, 7:31
  - curative amendments to tender offer, defense, 7:30
  - damages, 7:31, 7:34
  - defenses
    - generally, 7:28
    - curative amendments to tender offer, 7:30
    - poison pills, 7:29
  - disclosure of merger negotiations, 7:25
  - elements of action
    - causation, 7:27
    - disclosure of merger negotiations, 7:25
    - manipulative practices, 7:26
- SECURITIES EXCHANGE ACT OF 1934 § 14—Cont'd**
- Tender offers, misleading—Cont'd
  - elements of action—Cont'd
    - misrepresentations, material, 7:24, 7:25
    - omissions, material, 7:24, 7:25
    - parties liable, 7:22
    - reliance, 7:27
    - scienter, 7:23
    - standing to sue, 7:21
    - "going private" and SEC Rule 13e-4, 7:36
  - injunction, 7:32
  - manipulative practices, 7:26
  - misrepresentations, material, 7:24, 7:25
  - 1979 tender-offer rules, 7:18
  - omissions, material, 7:24, 7:25
  - parties liable, 7:22
  - poison pills, defense, 7:29
  - private right of action, existence of, 7:20
  - punitive damages, 7:34
  - reliance, 7:27
  - remedies
    - compensatory damages, 7:31
    - damages, 7:31, 7:34
    - injunction, 7:32
    - punitive damages, 7:34
    - rescission, 7:33
    - rescission, 7:33
    - Rule 13e-4 and "going private," 7:36
    - scienter, 7:23
  - Section 14(e), 7:16 *et seq.*
  - Section 13(d), litigation under, 7:19
  - standing to sue, elements of action, 7:21
  - state take over statutes, 7:35
  - "tender offer," definition, 7:17
- SECURITIES EXCHANGE ACT OF 1934 §§ 9, 16(B), 18(A)**
- Generally, 6:1-6:21
- Attorney's fees
  - insider trading, Securities Exchange Act § 16(b), 6:19

**SECURITIES EXCHANGE ACT OF 1934 §§ 9, 16(B), 18(A)—Cont'd**

Attorney's fees—Cont'd  
 market manipulation, Securities Exchange Act § 9, **6:10**  
 Costs, Securities Exchange Act § 9, **6:10**  
 Damages, Securities Exchange Act § 9, **6:9**  
 Defendants  
 insider trading, Securities Exchange Act § 16(b), **6:18**  
 market manipulation, Securities Exchange Act § 9, **6:5**  
 Defenses, Securities Exchange Act § 16(b), **6:20**  
 Director by deputization, insider trading, Securities Exchange Act § 16(b), **6:18**  
 False filings, Securities Exchange Act § 18(a), **6:2**  
 Insider trading, Securities Exchange Act § 16(b)  
 generally, **6:11, 6:12**  
 attorney's fees, **6:19**  
 defendants, **6:18**  
 defenses, **6:20, 6:21**  
 director by deputization, **6:18**  
 limitations, **6:21**  
 parties liable, **6:18**  
 punitive damages, **6:19**  
 purchase or sale, **6:15**  
 scienter, **6:14**  
 securities covered, **6:13**  
 Securities Exchange Act § 16, **6:11**  
 "short swing" profit, **6:16**  
 standing to sue, **6:17**  
 statute of limitations, **6:21**  
 Jurisdiction, Securities Exchange Act § 9, **6:7**  
 Market manipulation, Securities Exchange Act § 9  
 generally, **6:3**  
 attorney's fees, **6:10**  
 costs, **6:10**  
 damages, **6:9**  
 defendants, **6:5**  
 false filings, **6:2**  
 jurisdiction, **6:7**

**SECURITIES EXCHANGE ACT OF 1934 §§ 9, 16(B), 18(A)—Cont'd**

Market manipulation, Securities Exchange Act § 9—Cont'd  
 parties liable, **6:5**  
 proscribed activities, **6:8**  
 remedies  
 attorney's fees, **6:10**  
 costs, **6:10**  
 damages, **6:9**  
 scienter, **6:6**  
 standing to sue, **6:4**  
 Misleading statements in SEC filings, Securities Exchange Act § 18(a), **6:2**  
 Parties liable  
 insider trading, Securities Exchange Act § 16(b), **6:18**  
 market manipulation, Securities Exchange Act § 9, **6:5**  
 Punitive damages, Securities Exchange Act § 16(b), **6:19**  
 Purchase or sale, Securities Exchange Act § 16(b), **6:15**  
 Scienter  
 insider trading, Securities Exchange Act § 16(b), **6:14**  
 market manipulation, Securities Exchange Act § 9, **6:6**  
 "Short swing" profit, insider trading, **6:16**  
 Standing to sue  
 insider trading, Securities Exchange Act § 16(b), **6:17**  
 market manipulation, Securities Exchange Act § 9, **6:4**  
 Statute of limitations, insider trading, Securities Exchange Act § 16(b), **6:21**  

**SECURITIES LITIGATION UNIFORM STANDARDS ACT (SLUSA)**

Class actions, **12:3**  
 State statutory remedies, **8:22**

**"SECURITY"**

Blue Sky laws, **8:4**  
 Rule 10b-5 private actions, **2:10**

## INDEX

**SERVICE OF PROCESS**  
Rule 10b-5 private actions, **2:12**

**SETTLEMENTS**  
Stockholders' derivative actions, **9:32**

**“SHORT SWING” PROFIT**  
Insider trading, **6:16**

**SPECIFIC PERFORMANCE**  
Demand for relief, shareholder's complaint, **19:19**

**STANDING**  
Breach of fiduciary duty, **10:7**  
Racketeer Influenced and Corrupt Organizations Act (RICO), defendants, **3:5**  
Rule 10b-5 private actions, **2:9**  
Securities Exchange Act § 9. See Securities Exchange Act §§ 9, 16(b), 18(a)  
Securities Exchange Act § 16(b). See Securities Exchange Act §§ 9, 16(b), 18(a)  
Stockholders' derivative actions, **9:11-9:14**

**STATE ANTITAKEOVER STATUTES**  
Generally, **8:16 et seq.**  
Constitutionality, **8:19, 8:20**  
Historical background, **8:19, 8:20**  
Post-MITE history, **8:20**  
Remedies, **8:18**  
Scope, **8:17**

**STATE STATUTORY REMEDIES**  
Generally, **8:1-8:22**  
Attractions of state remedies, **8:1**  
Other state statutes, **8:21**  
Remands of securities cases, **8:22**  
Securities Litigation Uniform Standards Act (SLUSA) of 1998, **8:22**  
Securities statutes, **8:2 et seq.**  
Securities statutes. See Blue Sky Laws  
Takeovers. See State Antitakeover Statutes

**STATUTE OF FRAUDS**  
Generally, **10:42**

**STATUTE OF LIMITATIONS**  
See Limitations

**STIPULATIONS**  
Discovery, **21:20**

**STOCKHOLDERS’ DERIVATIVE ACTIONS**  
Generally, **9:1-9:39**  
Arbitration, **9:31**  
Attorney-client privilege, **9:30**  
Attorney's fees, **9:36**  
Background, **9:1**  
Choice of law, demand requirement, **9:15**  
Clean hands, **9:22**  
Collusion  
allegation of noncollusion as pre-requisite, **9:17**  
defense, **9:22**  
Corporate or personal recovery, **9:33**  
Costs  
recovery, **9:36**  
security for costs, **9:19**  
Defenses  
generally, **9:21**  
clean hands, **9:22**  
collusion, **9:22**  
pari delicto, **9:22**  
presumptions of business purpose and good faith, dismissal by special litigation committees generally, **9:23**  
basis for committee's decision, **9:26**  
ethics and representation of defendants, **9:27**  
independence of committee, **9:25**  
selection of committee, **9:24**  
special litigation committees, dismissal by, **9:23-9:27**  
standing, **9:22**  
untimeliness, **9:28**  
Demand on board of directors, **9:14-9:16**  
Discovery, **9:29**

**STOCKHOLDERS' DERIVATIVE ACTIONS—Cont'd**

- Dismissal, **9:32**
- Elements, **9:4**
- Equitable remedies, **9:34**
- Ethics and representation of defendants, **9:27**
- Fair and adequate representation, **9:13, 20:13**
- Federal Rule 23.1, **9:3**
- Forum non conveniens, **9:10**
- Futility of demand, standard for establishing, **9:16**
- Historical perspective, **9:1**
- Indemnification of officers and directors, **9:37**
- Jurisdiction
  - personal jurisdiction, **9:8**
  - removal to federal court, **9:7**
  - subject matter jurisdiction, **9:6**
- Jury trial, right to, **9:20**
- Liability insurance, officers and directors, **9:38**
- Minority stockholders, "unfairly prejudicial" treatment, **9:34**
- Motions to stay, **20:14**
- New statutory remedies, **9:34**
- Noncollusion, allegation of noncollusion as prerequisite, **9:17**
- Officers and directors
  - alternative protection, **9:38**
  - equitable remedies, conduct triggering, **9:34**
  - indemnification, **9:37**
  - liability insurance, **9:38**
  - quasi-derivative actions, **9:39**
- Pari delicto, **9:22**
- Personal jurisdiction, **9:8**
- Personal or corporate recovery, **9:33**
- Plaintiff's preconditions
  - generally, **9:11**
  - demand on board of directors, **9:14-9:16**
  - fair and adequate representation, **9:13**
  - shareholder status, **9:12**
- Presumptions of business purpose and good faith, dismissal by

**STOCKHOLDERS' DERIVATIVE ACTIONS—Cont'd**

- special litigation committees.
- Defenses, above
- Punitive damages, **9:35**
- Quasi-derivative actions, actions by officers and directors, **9:39**
- Recovery, **9:33-9:35**
- Removal to federal court, **9:7**
- Security for costs, **9:19**
- Settlement, **9:32**
- Shareholder status, **9:12**
- Special litigation committees, dismissal by, **9:23-9:27**
- Standard for establishing futility of demand, **9:16**
- Standing to sue, **9:11-9:14, 9:22**
- State statutes, **9:2**
- Subject matter jurisdiction, **9:6**
- Takeover maneuvers, **9:5**
- Transfer of venue, **9:10**
- 28 U.S.C.A. § 1404(a), transfer of venue, **9:10**
- Unfair or inadequate representation, motion to dismiss, **20:13**
- "Unfairly prejudicial" treatment of minority stockholders, **9:34**
- Untimeliness, **9:28**
- Venue, **9:10**
- Verification of complaint, **9:18**

**SUBJECT MATTER JURISDICTION**

- Defensive maneuvers, **20:2**
- Stockholders' derivative actions, **9:6**

**SUMMARY JUDGMENT**

- Defensive maneuvers, **20:11**

**TAKEOVERS**

- See State Antitakeover Statutes

**TENDER OFFERS**

- Fraud. See Securities Exchange Act § 14

**TIME: LIMITATIONS, LACHES, AND ESTOPPEL**

- Generally, **13:1-13:7**
- Charter amendments, state statutory requirements, **13:4**

## INDEX

**TIME: LIMITATIONS, LACHES, AND ESTOPPEL—Cont'd**  
Defendants, time as on side of, **13:1**  
Equitable defenses, **13:5, 13:6**  
Mergers, state statutory requirements, **13:4**  
Statute of limitations, **13:3**  
Time bar  
    attacking by plaintiff, **13:6**  
    defendant's use of time bar, **13:7**  
    failure of plaintiffs to act, **13:2**

**TRIAL**  
Generally, **22:1-22:11**  
Bench or jury trial, **22:2**  
Closing arguments, **22:6-22:11**  
Jury trial, **22:2, 22:3**  
Opening statement, **22:4**  
Preparation, **22:1**  
Strategy and tactics, **22:5**

**VELVET-HAMMER LETTER**  
Nonjudicial remedies, **18:2**

**VENUE**  
Arbitration, **18:12**  
Attack on venue, **20:6**  
Defensive maneuvers, **20:6**  
Jurisdiction and Venue  
    Misleading Proxy solicitations, **7:9**  
    Racketeer Influenced and Corrupt Organizations Act (RICO), **3:3**  
    Rule 10b-5 private actions, **2:12**  
    Stockholders' derivative actions, **9:9, 9:10**

**VISITORIAL POWERS DOCTRINE**  
Breach of fiduciary duty, **10:8**

**WORK-PRODUCT DOCTRINE**  
Discovery, **21:19**

**WRITTEN QUESTIONS**  
Discovery, depositions on written questions, **21:4**

**WRONGS**  
Generally, **1:3**  
Common law. See Common-Law Wrongs and Remedies