

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**
Scienter, **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 Stan-
 dards Act (SLUSA), **12:3**
Superiority of class action over indi-
 vidual 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 Common-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 complaint, **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

PENDENT JURISDICTIONS

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

PERSONAL JURISDICTION

Defense attack on personal jurisdic-
tion, **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 prospec-
tive 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 equita-
 ble 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 equi-
 table 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.

RESCISSION

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 Cor-
rupt 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**
Scienter, **4:7**
Scope of protection, **4:5**
Terms, **4:2**
Threshold considerations
 defendants, **4:6**
 liable parties, **4:6**
 privity, **4:8**
 scienter, **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**
 scienter, **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 Assis-
tance

**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**

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

Defenses

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 negotia-
tions, **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 trad-
 ing, 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**
 Scierter
 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 prerequisite, **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 direc-
 tors, **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 noncollu-
 sion as prerequisite, **9:17**
 Officers and directors
 alternative protection, **9:38**
 equitable remedies, conduct trig-
 gering, **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, dis-
 missal 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