



4TH STORY of Level 1 printed in FULL format.

Copyright 1998 American Lawyer Media, L.P.  
The Recorder

June 5, 1998, Friday

SECTION: NEWS; PG. 1

HEADLINE: STALKING THE VALLEY'S STOCK FRAUDS

BYLINE: Paul Elias;  
Reporter Paul Elias' e-mail address is pelias@therecorder.com

BODY:

There's no doubt plaintiffs attorneys are amassing a money pile rivaled only by God by successfully suing publicly traded Silicon Valley companies for stock fraud.

Led by Milberg Weiss Bershad Hynes & Lerach, with Lieff, Cabraser, Heimann & Bernstein a close second, the plaintiffs bar has brought more than 100 cases in the Northern District over the last three years, mostly against high-tech firms. Plaintiffs attorneys have settled many of those cases and pocketed millions in attorneys fees and expenses.

That they're making a killing, say the members of the plaintiffs bar, is a strong signal that fraud is rampant in the economic engine driving Silicon Valley.

But if all of that cheating is really occurring, whither the criminal charges?

During the same period that the plaintiffs bar has been raking it in, federal prosecutors in the Bay Area have filed criminal charges in only three cases involving fraud against investors.

The reasons for the dearth of criminal charges in Silicon Valley are many:

Lawyers on every side of the issue agree that the standard of proof, naturally, is much higher than it is on the civil side, where business gripes have prompted Congress to raise the evidentiary and procedural hurdles.

In addition, white-collar crime generally -- and securities fraud specifically -- are big manpower investments. It takes years to investigate, indict and prosecute such cases, which are inevitably proven by tangled paper trails that can easily bore or confuse a jury. And prosecutors need to lift off from the paperwork to show the fraud was deliberate, rather than the product of shoddy documentation or mismanagement.

But even so, there have been other matters that may have kept local prosecutors from getting in on the securities fraud action: An ever-changing

roster of veteran attorneys taking their skills to the private sector, and squabbles that prosecutors have had with investigative agencies.

"It is rare to find the Securities and Exchange Commission making criminal referrals to the U.S. attorney," said Sean Prosser, a former SEC attorney now an associate in the Los Angeles office of Brobeck, Phleger & Harrison. "Only the real egregious cases get charged -- the U.S. attorney's office usually doesn't have the staff."

That's true, confirms Michael Yamaguchi, who said his office can usually afford to spare just one prosecutor on a case while the FBI grudgingly assigns a single investigator.

"They're manpower-intensive," Yamaguchi said. "And we just don't have the overwhelming staff that private firms do."

But despite that, Yamaguchi said his office is second only to U.S. Attorney Mary Jo White's New York City operation in the number of securities-related cases investigated.

Furthermore, Yamaguchi says his office has also prosecuted a number of insider-trading and fraud cases outside the Silicon Valley.

#### CAL MICRO COMES TO TRIAL

This week, one of the three securities-related Silicon Valley cases brought in the Northern District opened -- and just as quickly closed -- before Judge Vaughn Walker. Walker declared a mistrial Thursday in U.S. v. Desaiouadar, 97-0294, which stems from the spectacular near-collapse of Milpitas chip manufacturer Cal Micro Devices.

One of three defendants in the case agreed to a plea bargain after the trial got underway. Walker will pick a new jury for a case against the two remaining defendants next week.

Founder and one-time CEO Chan Desaiouadar and former treasurer Steven Henke stand accused of claiming nonexistent revenue to bolster stock values as the company headed for a public stock offering in 1994.

Two others have already pleaded guilty to related charges.

On Wednesday former company president Surendra Gupta pleaded guilty to fraud charges. About three years ago, former chief accounting officer Ron Romlto pleaded guilty to insider-trading charges, and has agreed to help Assistant U. S. Attorney Robert Crowe prosecute his case.

Crowe alleges that the executives grossly distorted the company's worth to artificially inflate its stock price, which reached a high of \$23 a share in June 1994. Soon after, the indictment alleges, the two sold thousands of their personal shares in the company. But as news of the executives' funky bookkeeping leaked onto the street during the following five months, the stock plunged to \$2.75 a share.

The criminal trial comes a month after the Securities and Exchange Commission extracted \$387,000 from other company executives to settle a civil

\_\_Voll \_\_: \_\_U.S. v. Desai\_\_ and the Mediasion cases, \_\_U.S. v. Humphress \_\_, 97-4011, \_\_U.S. v. Williams \_\_, 98-40078, and \_\_U.S. v. Faust \_\_, 98-40005. Michael Humphress, a former vice president in charge of sales, pleaded guilty to one count of mail fraud and has agreed to testify against his former colleagues.

A civil suit against the former executives and the company's outside auditors settled late last year for \$26 million.

THE NEXT TO GO

True to form, the Cal Micro trial also represents Crowe's swan song as a civil servant: After the jury brings back a verdict, he will go to work for the budding San Francisco plaintiffs firm of Girard & Green -- a move that is very near a cliché .

It remains to be seen if the Cunningham-to-Seeborg-to-Crowe combination is an effective one as top-flight defense attorneys -- Frank Uphaus of San Jose's Berliner Cohen and San Francisco's Patrick Hallinan -- look to take advantage of the ever-changing prosecutors.

Crowe concedes that the many handoffs in the office put him at a disadvantage.

"I feel tremendously handicapped coming into the middle of this complex case," he said. But the Justice Department in Washington, D.C., has lent him another prosecutor to assist with the trial, Pamela Merchant. Now with Gupta flipping on his co-defendants, Crowe's job just got a little easier.

"If I get a conviction," he said, "it will be the perfect way to end my career here."

LANGUAGE: ENGLISH

LOAD-DATE: June 5, 1998