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Do the PSLRA's Proportionate Liability Provisions Govern Section 20 Control Person Liability?

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INTRODUCTION

Congress enacted the Private Securities Litigation Reform Act of 1995 (the "PSLRA") "to deter strike suits by opportunistic private plaintiffs who filed securities fraud claims of dubious merit in order to exact large settlement recoveries."[1] The PSLRA was intended, in part, to address the concern that the application of joint and several liability in securities class actions unfairly resulted in less culpable defendants having to pay disproportionately for damages caused by other defendants.[2] Under joint and several liability, a non settling defendant found to be 1% liable faced the prospect of paying 100% of the damages in a securities action.[3] To combat this problem, the PSLRA amended, among other existing legislation, the Securities and Exchange Act of 1934 (the "Exchange Act")— including Section 10(b)— so that a defendant faces joint and several liability only if a jury finds that the defendant knowingly violated the securities laws.[4] For all other violators (*i.e.*, those who did not knowingly violate the securities laws), the existing joint and several liability regime was replaced by a proportionate liability scheme for the allocation of damages.[5]

Although the PSLRA describes how proportionate liability generally applies to violators of the securities laws, it does not specify how its proportionate liability scheme affects existing theories of derivative liability (including Section 20(a) of the Exchange Act), which, in certain situations, holds a control person liable for an entity's independent Exchange Act violation. In particular, given that Section 20(a) provides that control persons shall be liable "jointly and severally with and to the same extent" as the controlled person that violated the securities laws, the question of whether (and to what extent)

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the PSLRA's proportionate liability provisions amend control person liability under Section 20(a) remains an open one.[6]

Control persons face a stark contrast in degree of liability depending on whether courts apply Section 20(a)'s existing joint and several liability provision or the PSLRA's proportionate liability scheme. Take for example the situation in which, after using the PSLRA's proportionate scheme to determine the extent of the controlled person's liability, a jury finds that a controlled person has acted recklessly and is responsible for 75% of the total damages of $100 million (while other parties are liable for only 25%). Prior to the enactment of the PSLRA, the control person and controlled person would have been jointly and severally liable for the entire $100 million in damages. Now, if the control person's and the controlled entity's liability are viewed as co-extensive even after the enactment of the PSLRA, $75 million of damages would be imposed on the control person (less any offset for any settlement or amounts paid by the controlled person) irrespective of the control person's intent or percentage of fault. If, however, the PSLRA's proportionate liability provisions supersede Section 20(a)'s mandate—that the control person be jointly and severally liable with and to the same extent as the controlled person—the control person's state of mind and the amount of damages attributable to it will be determined separate and apart from the controlled person. Thus, in the that situation, if the control person is found to have acted recklessly and liable for 10% of the $100 million in total damages, the control person's liability only would be $10 million, not $75 million.

The Eleventh Circuit was the first circuit court to address the effect of the PSLRA's liability scheme on Section 20(a) control person liability in *Laperriere v. Vesta Ins. Group, Inc.*, 2008 WL 1883482 (11th Cir. Apr. 30, 2008). In that case, the court held that the jury must separately determine the damages attributable to the control person and the controlled person using the PSLRA's proportionate liability provisions.[7] This Article reviews the two statutory provisions and analyzes the Eleventh Circuit's recent decision to determine whether proportionate liability should apply to control persons.

I. THE PSLRA

Before the enactment of the PSLRA, the general rule in securities actions was that defendants found to have violated the securities laws were jointly and severally liable for all plaintiff's damages.[8] The PSLRA, among other things, amends the governing laws on joint and several liability in the securities law context. It establishes a proportionate liability regime for all defendants considered to be "covered persons" that have **not** "knowingly committed a violation of the securities laws."[9] The PSLRA provides that a covered person against whom a final judgment is entered in a private action

shall be liable solely for the portion of the judgment that corresponds to the percentage of responsibility of that covered person.[10] The PSLRA also sets forth a framework on how the determination of responsibility is to be made for each covered person and for any other person alleged to have caused or contributed to plaintiff's losses. Based on this framework, juries are instructed to consider "(i) whether such person violated the securities laws; (ii) the percentage of responsibility of such person, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and (iii) whether such person knowingly committed a violation of the securities laws."[11] Finally, the PSLRA provides that juries must specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each covered person found to have caused or contributed to the loss incurred by the plaintiff(s).[12]

Notwithstanding the proportionate liability scheme contemplated by the PSLRA, conflicting provisions within the statute itself raise significant questions concerning whether that framework was intended to modify and/or replace the joint and several liability provisions set forth in Section 20(a) of the Exchange Act. First, Section 21(D)(f), which was added to the Exchange Act when the PSLRA was enacted, provides that "nothing in this subsection shall be construed to ... modify the standard of liability associated with any action under the securities laws."[13] Second, although the PSLRA explicitly amends Section 11 of the Securities Act of 1933 (the "Securities Act")[14] to incorporate its proportionate liability provisions for "outside directors,"[15] the PSLRA does not make a similar explicit reference to Section 15 of the Securities Act (which governs control person liability under the Securities Act) or Section 20(a) of the Exchange Act. It could be argued, therefore, that the extent of a control person's liability is the same as it was prior to the enactment of the PSLRA (*i.e.*, joint and several for all of the damages). On the other hand, the PSLRA notes that a "covered person" is "a defendant in any private action arising under this chapter," with "this chapter" referring to Chapter 2B of Title 15 of the United States Code.[16] Significantly, Section 20(a) is located in Chapter 2B of Title 15 of the United States Code. This would seem to indicate that the PSLRA's proportionate liability scheme was intended to apply in some manner to control persons.

II. CONTROL PERSON LIABILITY UNDER SECTION 20

Section 20(a) of the Exchange Act states that persons and entities falling within the scope of "control persons" are liable to the same extent as the persons they control.[17] As previously noted, Section 20(a) provides that:

> [e]very person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder

> shall also be liable *jointly and severally with and to the same extent* as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

Id. (emphasis added).

Congress included Section 20 in the Exchange Act to prevent control persons from escaping liability by having straw parties, subsidiaries, or other agents acting on their behalf commit acts that are prohibited by the securities laws.[18] During the Congressional hearings prior to the passage of the Exchange Act, Congress explicitly referred to the "dangerous and unreliable system" in which control persons would attempt to evade liability by utilizing "dummy" officers and directors to act in their stead.[19] Section 20(a) was intended to address this problem by subjecting a control person to liability "to the same extent as the person controlled unless the controlling person acted in good faith."[20] Although Congress did not include a specific definition for the term "control" in the statute, the Securities and Exchange Commission has promulgated a regulation that defines control under the Exchange Act as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, or otherwise."[21]

To effectuate the remedial purposes of the securities laws, courts have interpreted Section 20 broadly as a means of imposing derivative liability on control persons for the actions of others.[22] To establish such liability, the plaintiff must show that the controlled person violated the federal securities laws. The plaintiff must then prove that the control person had the power to exercise control over the general affairs of the primary violator as well as over the specific corporate policy that resulted in the primary violation of the securities laws.[23] As the Eleventh Circuit noted in *Vesta,* some circuits also require the plaintiff to prove that the control person was a "culpable participant"[24] in the primary violation.[25] Although Section 20(a) casts a wide net in looking beyond formalistic interpretations of control, it also provides an unique affirmative defense. Under Section 20(a), a control person or entity has an absolute defense if it did not act in bad faith or with a recklessness that equates to inducing the acts constituting a securities law violation.[26]

With this background, this Article next analyzes the Eleventh Circuit's decision in *Vesta* and its implications for control person liability.

III. *Laperriere v. Vesta Ins. Group, Inc.*

A. Factual and Procedural Background

In 1998, a group of investors that purchased shares in Vesta Insurance Group, Inc. ("Vesta") filed a securities class action against (1) Vesta and certain of its officers and directors; (2) KPMG Peat Marwick, LLP ("KPMG"), Vesta's outside auditor; and (3) Torchmark Corporation ("Torchmark"), the former parent company of Vesta.[27] The investors alleged various causes of action under the Exchange Act, including Section 10(b) claims against Vesta and Section 20(a) claims against Torchmark in connection with Vesta's restatement of its cumulative revenues and net income for years 1995, 1996 and 1997. Between 1998 and 2004, the investors reached court-approved settlements with Vesta, Vesta's officers and directors and KPMG.[28] However, Torchmark—the only remaining defendant in the action—still faces liability for the Section 20(a) claims brought against it.[29] After Torchmark raised affirmative defenses that sought to apply the PSLRA's proportionate liability provisions to the pending Section 20(a) claims, the investors moved to strike those defenses.[30] Finding that the proportionate liability provision of the PSLRA "trumps" control person liability under Section 20(a), the district court denied the motion to strike.[31] However, after the investors requested that the district court reconsider its ruling, or, at a minimum, certify the issue for appeal to the Eleventh Circuit, the district court granted the investors' motion to file an interlocutory appeal.[32] The court held that the issue of whether, and to what extent, the proportionate liability provisions of the PSLRA amended the joint and several liability provisions of Section 20(a) is a question of law as to which there is substantial ground for difference of opinion.[33]

B. The Eleventh Circuit's Decision

In its per curiam decision, the Eleventh Circuit began its analysis by considering whether the proportionate liability provisions of the PSLRA even apply to Section 20 claims against control persons.[34] The court noted that the statutory text of the proportionate liability provisions of the PSLRA uses the term "any" before the phrase "covered person." Relying on the Supreme Court's decision in *United States v. Gonzales*, 520 U.S. 1 (1997),[35] the court noted that the word "any" has an all-encompassing and powerful meaning and indicates that there should be no restriction placed on the phrase that it modifies.[36] The court next cited to the definition of "covered person" specifically set forth in the PSLRA, 15 U.S.C.A. § 78u-4(f)(10)(C)(i), which includes "a defendant in any private action arising under this chapter."[37] Given that the text of the PSLRA and Section 20 are both contained in Chapter 2B of Title 15 of the United States Code, the court concluded that the phrase any

covered person "means exactly that and nothing less" and should be broadly construed to include a defendant facing control person liability under Section 20(a).[38] As a result, the court held that the PSLRA's proportionate liability provisions apply to Section 20(a) control person liability.[39]

That was not the end of the court's inquiry. In the court's view, it next had to consider whether the PSLRA did amend the joint and several liability provisions of Section 20(a).[40] The court again reviewed the text of the PSLRA. In particular, it quoted Section 21(d)(f) — the "applicability" heading of the PSLRA — which provides that "[n]othing in this subsection shall be construed to create, affect, or in any manner modify, the standard for liability associated with any action arising under the securities laws."[41] Accordingly, the court found that the proportionate liability provisions of the PSLRA do not supersede the "standard for liability" created by Section 20(a) for control persons.[42] The court commented that the "plain meaning of that language of the PSLRA compels the conclusion that if controlling person liability existed before the PSLRA added Section 21(D)(f), it still exists afterwards."[43] Going beyond the statutory text, the court also reviewed the legislative history of the PSLRA and concluded that it provided further support for its interpretation of the PSLRA's proportionate liability provisions. Noting the Conference Committee Report that produced the final version of the PSLRA, the court recited

> [T]he "fair share" rule of proportionate liability does not create any new cause of action or expand, diminish, or otherwise affect the substantive standard for liability in any action under the 1933 Act or the 1934 Act ... [T]he standard of liability in any such action should be determined by the pre-existing, unamended statutory provision that creates the cause of action, without regard to this provision, *which applies solely to the allocation of damages.*[44]

The court went on to comment that "all of this means that the PSLRA, including the proportionate liability provisions, does not change the rules for determining who is liable for violating the securities laws." [45] The Eleventh Circuit concluded that the PSLRA did not amend the joint and several liability provisions of Section 20(a), nor had the PSLRA revised the controlling person's affirmative defenses under the Exchange Act.[46]

The court was thus at a crossroads. If the PSLRA was intended to apply to "any" covered person but was also intended not to modify the rules for establishing liability, there is an obvious tension between the PSLRA's and Section 20(a)'s liability provisions and a significant question as to how they coexist. Again relying heavily on the Conference Committee Report, the court attempted to forge a balance. It held that the PSLRA was intended

to change the rules for allocating damages among the parties only **after** liability had been established by the fact finder. In essence, the court ruled that what was changed by the PSLRA was not the standard of liability that applies to a control person—a control person may be held liable derivatively to the same degree as the controlled person for any securities law violations by the latter—but a control person's responsibility for the damages caused by the underlying securities law violation.[47] That is, the control person no longer automatically assumes the controlled person's share of damages.[48]

To determine whether the control person is responsible for the entire amount of damages or only its proportionate share, the fact finder must determine whether the control person committed a knowing violation of the securities laws. If the control person is found not to have committed a knowing violation, there is liability for the violation but responsibility for the damages is only proportionate, not joint and several, as it would be for all "covered persons" under the PSLRA.[49] The court commented that its interpretation—Section 20(a) first providing the standard of liability for control persons and then having the proportionate liability sections of the PSLRA provide the basis for damages allocation—"acts as a levy ensuring that each of the two provisions stays within its proper channel, preventing either one from washing out the other."[50]

C. The Eleventh Circuit's Holding Is Consistent With the PSLRA's Intent

Although its analysis is somewhat convoluted, the Eleventh Circuit's decision reaches the proper conclusion. Its holding reflects a fair reading of the PSLRA's statutory language and adequately clarifies the ambiguity that existed when the legislation was drafted. Joint and several liability should exist under Section 20(a) only if the fact finder specifically determines that both the control and controlled person knowingly committed the violation. If the fact finder determines that there was a violation of Section 20(a) but that the control person did not commit a knowing violation of the securities laws, the control person's responsibility for the damages is only proportionate, not joint and several.

The legislative history of the PSLRA also supports the court's ruling. As the Eleventh Circuit noted, the intent of Congress was to impose joint and several liability only on those defendants who engage in knowing securities fraud.[51] Other defendants found liable but who did not engage in knowing securities fraud were intended to be "liable only for their share of the judgment (based upon the fact finder's apportionment of responsibility)."[52]

Moreover, the PSLRA modified the extent of damages for which a controlled person is liable. Because Section 20(a)'s derivative liability is pre-

mised on the underlying liability of the controlled person, an interpretation that the PSLRA does not in any way modify the joint and several liability provisions of Section 20(a) could lead to absurd results. For instance, there are some circumstances in which a control person arguably could be held responsible for more of the damages caused by the securities law violations than the controlled person itself.[53] Consider the following scenario: If both the control person and the controlled person acted recklessly (not knowingly), the reckless control person could be responsible jointly and severally for all damages (as would have been the case prior to the passage of the PSLRA) caused by the securities law violations. The primary violator, on the other hand, would escape joint and several liability for damages under the proportionate liability provisions of the PSLRA. As noted by the Eleventh Circuit, this bizarre result could not have been intended by the drafters of the PSLRA as it "would be contrary to common sense" to punish a derivatively liable party more harshly that the primary violator of the securities laws.[54] Following this rationale, the control person should never be allocated damages in an amount greater than that attributed to the controlled person.[55]

CONCLUSION

The *Vesta* decision provides clear guidance to district courts on how they should instruct juries when a Section 20(a) claim is brought against a control person. Before establishing the scope of a control person's liability under Section 20(a), the jury must make a determination that (1) the controlled party committed an underlying violation of the securities laws; (2) the party facing Section 20(a) liability controlled the primary violator as well as the specific corporate policy that resulted in the primary violation of the securities laws; (3) the control person did not act in good faith; and (4) the controlled and control persons should be allocated a percentage of responsibility for the securities law violations (measured as a percentage of the total fault of all persons that caused or contributed to the loss incurred by the plaintiff). If the jury answers these four questions in the affirmative, the jury must next determine whether the control person knowingly committed a violation of the securities laws. If both the control person and controlled person are found to have knowingly violated the securities laws, the control person is jointly and severally liable for all damages. However, if the jury determines that either the control or controlled person did not commit a knowing violation (*i.e.*, acted recklessly), the control person is only liable for its proportionate share of damages, if any, and the control person's damages should never exceed that of the controlled person.

The Eleventh Circuit's decision provides many tangible benefits to defendants. First, although juries will have to navigate through the complexities

of the two statutes and weigh the relative responsibilities of a control person and a controlled person in allocating damages, control persons no longer face the prospect of automatically being assessed the same level of damages as primary violators. This limitation on the derivative liability of a parent corporation for securities violations committed by its subsidiaries will particularly benefit large and/or multinational corporations that control publicly traded U.S. companies. Second, *Vesta* will cause juries to more closely analyze the conduct of each defendant and distinguish between the substantive acts and knowledge of the controlled person and the control person in assessing the liability of each. As a result, plaintiffs in securities class actions will have much more of a challenge tainting all defendants through the conduct of one bad actor. Lastly, the ruling provides a useful framework on how to defend Section 20(a) causes of action—a previously unsettled and murky area of the law—including how jury instructions should be fashioned when control person claims are tried.

It will be interesting in the upcoming months to see how other circuit courts address this complex issue and whether they endorse or reject the Eleventh Circuit's reasonable approach.

NOTES

1. *Novak v. Kasaks*, 216 F.3d 300, 306 (2d Cir. 2000).

2. *See* H.R. Rep. No. 104-369, at 37 (1995) (Conf. Rep.), *reprinted in* 1995 U.S.C.C.A.N. 730, 736.

3. *See id.*

4. *See* 15 U.S.C.A. § 78u-4(f)(2)(A) ("Any covered person against whom a final judgment is entered in a private action shall be liable for damages jointly and severally only if the trier of fact specifically determines that such covered person knowingly committed a violation of the securities laws.").

5. *See* 15 U.S.C.A. § 78u-4(f)(2)(B)(i) ("Except as provided in subparagraph (A), a covered person against whom a final judgment is entered in a private action shall be liable solely for the portion of the judgment that corresponds to the percentage of responsibility of that covered person, as determined [by the fact finder].").

6. 15 U.S.C.A. § 78t(a).

7. *See id.* at *10.

8. *See Musick, Peeler & Garrett v. Employers Ins. of Wausau,* 508 U.S. 286, 292 (noting that violators "share joint liability for that wrong under a remedial scheme established by the federal courts").

9. 15 U.S.C.A. § 78u-4(f)(2)(A). A party "knowingly" commits a violation of the securities laws and is responsible for damages jointly and severally if it (1) "makes an untrue statement of a material fact, with actual knowledge that the representation is false" or (2) "omits to state a fact necessary in order to make the statement made not misleading, with actual knowledge that ... one of the material representations of the covered person is false" or (3) "engages in ... conduct with actual knowledge of the facts and circumstances that make the conduct of that covered person a violation of the securities laws." 15 U.S.C.A. § 78u-4(10).

10. 15 U.S.C.A. § 78u-4(f)(2)(B)(i).

11. 15 U.S.C.A. § 78u-4(f)(3)(A)(1)(iii).

12. 15 U.S.C.A. § 78u-4(f)(3)(B).

13. 15 U.S.C.A. § 78u-4(f)(1).

14. Section 11 was designed to hold those who prepare and sign registration statements of an issuer to a stringent standard of liability for any material misrepresentations contained in those statements. *In re IPO Sec. Litig.*, 241 F. Supp. 2d 281 (S.D.N.Y. 2003).

15. 15 U.S.C.A. § 77k(f)(2)(A-B); *see also* Donald C. Langevoort, *The Reform of Joint and Several Liability Under the Private Securities Litigation Reform Act of 1995: Proportionate Liability, Contribution Rights and Settlement Effects*, 51 Bus. Law. 1157, 1164 (Aug. 1996) ("Concerned with the harsh impact of section 11 on outside directors, and fearing that section 11 liability makes outside directors harder to attract, the new legislation allows for proportionate liability where an outside director's only failing was a lack of due diligence or negligent failure to discover the truth.").

16. *See* 15 U.S.C.A. § 78u-4(f)(10)(C)(i).

17. 15 U.S.C.A. § 78t(a).

18. *See* H.R. Rep. No. 73-152, at 12 (1933).

19. S. Rep. No. 73-47, at 5-6 (1933); *see also Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1577 (9th Cir. 1990 (Section 20 "was intended to impose liability on controlling persons, such as controlling shareholders and corporate officers, who would not be liable under respondeat superior because they were not the actual employers. Thus, in enacting Section 20(a), Congress expanded upon the common law, and in doing so, created a defense (the good faith defense) that would be available only to those who, under common law principles of respondeat superior, would have faced no liability at all.")) (footnote omitted).

20. H.R. Rep. No. 73-1383, at 26 (1934).

21. 17 C.F.R. § 230.405.

22. *See Hateley v. S.E.C.*, 8 F.3d 653, 656 (9th Cir. 1993) ("As we have stated, Section 20(a) is a means of imposing vicarious liability on controlling persons.").

23. *See Brown v. Enstar Group, Inc.*, 84 F.3d 393, 396-97 (11th Cir. 1996) (A defendant faces control person liability under Section 20(a) if he or she "had the power to control the general affairs of the entity primarily liable at the time the entity violated the securities laws ... [and] had the requisite power to directly or indirectly control or influence the specific corporate policy which resulted in the primary liability").

24. Even among the courts that have adopted the "culpable participant" standard, there has been some disagreement as to the precise meaning of the term. *See, e.g., Lapin v. Goldman Sachs Group, Inc.*, 506 F. Supp. 2d 221, 247 (S.D.N.Y. 2006) ("[T]he term culpable participation suggests some individualized determination ... of the defendant['s] ... particular culpability.") (quotation omitted); *In re Alstom SA*, 406 F. Supp. 2d 433, 490 (S.D.N.Y. 2005) ("Culpable participation clearly requires something more than negligence. Disagreement exists within the Second Circuit, however, as to precisely what conduct, beyond negligence, the test entails.").

25. *Vesta Ins. Group, Inc.*, 2008 WL 1883482, at *5; *see also Lanza v. Drexel & Co.*, 479 F.2d 1277, 1299 (2d Cir. 1973) (en banc) (noting that directors face liability as control persons under Section 20(a) only if they are "in some meaningful sense culpable participants in the fraud perpetrated by controlled persons").

26. *See G.A. Thompson & Co., Inc. v. Partridge*, 636 F.2d 945, 963 (5th Cir. 1981).

27. *See Vesta* at *1.

28. *See id.*

29. *See id.*

30. *See id.*

31. *See id.*

32. *See id.*

33. *See id.*

34. *See id.* at *7.

35. *See* 520 U.S. at 5 ("Read naturally, the word 'any' has an expansive meaning, that is, one or some indiscriminately of whatever kind.") (internal quotation marks omitted).

36. *See Vesta* at *7 (Any "does not mean 'some' or 'all but a few,' but instead means 'all.'").

37. *See id.*

38. *Id.*

39. *Id.* The court thus implicitly rejected the argument that the PSLRA's proportionate liability provisions only extend to cases brought under Section 10(b) or Rule 10b-5. Moreover, that argument has little support. If Congress intended the PSLRA to apply only to Section 10(b) or Rule 10b-5 liability, one would have expected the legislation to clearly reflect such a limitation.

40. *See id.*

41. 15 U.S.C.A. § 78u-4(f)(1).

42. *See Vesta* at *7.

43. *Id.*

44. *Id.* at *8 (quoting H.R. Conf. Rep. No. 104-369, at 38, as reprinted in 1995 U.S.C.C.A.N. 730, 737 (emphasis added)).

45. *Id.* at *8.

46. *Id.* ("If a controlling person would have been substantively liable under section 20(a) before the PSLRA, it still will be afterwards.").

47. *See id.*

48. *See id.*

49. *See id.* at *8.

50. *Id.* at 9. The court also cited to the statutory language in support of its distinction between substantive liability and allocation of damages. Commenting that the statutory language in the PSLRA ("[a]ny covered person against whom a final judgment is entered in a private action shall be liable for damages jointly and severally only if," 15 U.S.C.A. § 78u-4(f)(2)(A)) differs from the liability language used in Section 20(a) ("liable jointly and severally"). *Vesta* at *9.

51. *Id.* (citing S. Rep. 104-98, at 22 (1995), as reprinted in 1995 U.S.C.C.A.N. 679, 701).

52. *Id.*

53. *See id.*

54. *Id.* at 10 ("We ought to avoid any interpretation of the statute that would treat controlling persons more harshly than the primary violator — that would put derivatively liable controlling persons on the

hook for all damages, but let primary violators off the hook for any damages that their own action did not cause.").

55. As a result, if the controlled person is only found to have acted recklessly (not knowingly) and is allocated a certain percentage of responsibility for the total damages caused, the resulting damages amount attributable to the controlled person acts as the ceiling (or the maximum amount) of the control person's damages. Obviously, if the jury determines that the control person's percentage of responsibility was lower than the controlled person, the control person's damages would be less than the controlled person.