

Skadden has worked with clients in or involved with the accounting and auditing profession for more than 25 years. We have an in depth understanding of the challenges accounting firms and individual accountants face from sea changes in the global economy and the litigation that often follows, to flashpoints in certain sectors that may adversely affect their clients. Our accounting practice has provided integrated legal services relating to litigation and investigations, regulatory and compliance issues, global and national structuring, acquisitions and divestitures, financing, tax and general commercial matters to Deloitte LLP, Ernst & Young LLP, KPMG LLP PricewaterhouseCoopers LLP and RSM US LLP (former McGladrey LLP), as well as other accounting firms.

Our experience also extends to advising public companies and individuals on a diverse range of accounting and professional liability issues, including those where litigation cannot be avoided. Collectively, Skadden attorneys have defended hundreds of accounting-related cases on behalf of a wide range of clients. We have represented, for example, BISYS Inc., Blackberry (f/k/a/ Research in Motion), Cendant Corporation, Computer Sciences Corporation, Dell Inc., Ebix Inc., HealthSouth Corporation, Kmart Corporation, McKesson Corporation, Sprint Nextel Corporation, Swisher Hygiene Inc., The Warnaco Group Inc. and Washington Mutual Inc., among others, in accounting-related matters.

Litigation and Investigations

Skadden litigators have significant experience defending Big Four clients in civil litigation and white collar crime matters, as well as SEC, PCAOB and, other regulatory and enforcement investigations. Our team includes attorneys with prosecutorial, enforcement agency and accounting firm backgrounds.

Skadden has litigated matters related to securities, professional liability and financial fraud. We have represented auditor clients in class and derivative actions and arbitrations, including matters

related to audit challenges, tax consulting engagements, appraisals and consultancies, both where audit firms and partners were issuers' co-defendants and as sole defendants, including as lone remaining "deep pockets" after issuer bankruptcy. Our attorneys have represented major audit firms in a series of revenue recognition cases, including those arising out of bankruptcies and financial scandals. We also have handled cases establishing the application of strict comparative negligence to auditors under Massachusetts law, so that greater negligence by the issuer bars auditor malpractice liability to its client.

Our trial record is matched by our work on behalf of the Big Four and other firms in investigations and enforcement proceedings by the SEC and PCAOB, federal and state grand juries, inspectors general, state attorneys general, and other regulatory and government agencies. Skadden attorneys have addressed numerous SEC and PCAOB investigations and enforcement proceedings for auditors, including in recent years in response to "Operation Broken Gate," and done tax and appraisal cases in which we have obtained limits on liability. We conduct internal investigations in response to allegations of accounting irregularities and other improprieties raised by enforcement agencies and whistleblowers.

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We also have advised accounting firms and public companies on complex business matters, including fact-finding and analysis in connection with FCPA, OFAC and other global issues. Our work in this area ranges from simultaneous U.S./foreign government agency investigations to inquiries in emerging-market countries.

Regulatory and Compliance

While we are best known for our core capabilities in litigation and investigative matters, an integral component of Skadden's relationships with accounting and other professional services firms has been helping them navigate the ever-changing regulatory landscape. We have a deep knowledge of accounting firm operations and how their professional responsibilities intersect with federal and state laws. From Sarbanes-Oxley regulations to emerging issues auditors face in the current economic environment, our attorneys work closely with this network of clients on corporate governance issues, ethics and compliance program development.

When accounting disputes and investigations do arise — or when clients look for counsel on best practices to avoid or minimize controversy — Skadden's regulatory experience is best demonstrated by our tax and tax litigation resume. We counsel on every aspect of tax law, including specialized subjects ranging from tax accounting to consolidated returns to federal, state and local taxes. Our attorneys have provided Big Four clients with annual assessments of tax practices and the procedures in place to ensure quality and minimize risk. We also represent clients in federal and state tax controversy matters related to accounting issues, including in connection with examinations, administrative appeals and special programs designed to reach expedited results. Our attorneys have served as special tax counsel in connection with internal investigations on tax-related matters. The Skadden team includes a former commissioner of the IRS and two former assistant secretaries of the Treasury for Tax Policy.

Global Structuring, Transactions and General Commercial

Skadden attorneys have worked closely with Big Four and other accounting firms on the design and implementation of national, regional and global legal-entity structures to house different service lines (e.g., audit, consulting, tax and advisory) or to facilitate cross-border or cross-functional cooperation, coordination and service delivery. Much of this work involves efforts to balance tax, regulatory and operational goals with effective risk-management strategies. Skadden also has brought in-depth industry knowledge to a significant number of acquisition and divestiture transactions in this

sector. In recent years, many of the transactions, acquisitions and joint ventures have involved consulting and advisory services.

We regularly advise accounting firms on U.S. and international financing matters and have represented Big Four firms in private placements, credit facilities and partner capital loan facilities. Skadden also has provided these clients with advice on corporate restructurings and in major commercial leasing transactions.

Representative Matters

Our recent experience includes, among others:

Litigation and Regulatory

- Deloitte:

- in obtaining summary judgment from the Delaware Court of Chancery in an action brought by a former Deloitte partner for alleged breaches of the Deloitte partnership agreements and breaches of fiduciary duty;
- in class action litigation and regulatory proceedings arising out of subprime-related issues at American Home Mortgage Investment Corporation;
- in shareholder and professional malpractice litigation and other matters following the disclosure of an accounting fraud by Symbol Technologies;
- in a federal securities shareholder class action and an accounting malpractice suit brought by the shareholders and management of Cambridge Biotech Corp. arising out of questionable "revenue recognition" by the biotech company. The U.S. District Court for the Southern District of New York dismissed the class action complaint against Deloitte with prejudice and without leave to replead based on a three-part standard for charging auditors with scienter articulated in that case;
- in the dismissal of securities fraud claims in the U.S. District Court for the Southern District of New York. The plaintiffs brought a class action against certain directors and officers of Actrade Financial Technologies and Deloitte (Actrade's auditor) alleging claims under Section 10(b) of the 1934 Act. The firm also is representing Deloitte in the related bankruptcy proceeding;
- as a creditor in the bankruptcy case of Adelphia Communications Corporation, in which Deloitte was a defendant in multiple lawsuits and in a regulatory investigation arising out of Adelphia's accounting issues;

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- as defendant in a lawsuit brought by a company in foreign liquidation;
 - in connection with a criminal investigation of an audit client in which several Deloitte partners were interviewed and testified before the grand jury;
 - in defense of a litigation trust's malpractice and treble damage misrepresentation claims brought and prosecuted in federal and state courts in Boston arising out of the bankruptcy of Nutra-Max;
 - in a securities fraud class action titled *In re Fine Host Corporation* in the U.S. District Court for the Southern District of New York; and
 - in litigation arising out of fraud claims against Fortress Re, a manager of a reinsurance pool;
- Ernst & Young:
- in a lawsuit in the Superior Court of Massachusetts brought by plaintiffs Peter F. Palmer and his wife, Alison Palmer, alleging negligence and seeking to recover \$10 million in damages from an audit by the Internal Revenue Service. Skadden obtained partial summary judgment on behalf of Ernst & Young;
 - in defense and at trial of the \$600 million bankruptcy trustee claims against Ernst & Young arising out of the failure of Bank of New England in a jury case tried in federal court in Boston;
 - in the dismissal of a shareholder class action filed in the U.S. District Court for the District of New Hampshire concerning the American Depositary Shares of SmartForce PLC and its acquisition of SkillSoft Corporation; and
 - in regulatory investigations representing Ernst & Young individual partners;
- KPMG:
- in connection with claims brought by individuals formerly associated with KPMG who had been implicated in governmental investigations;
 - in connection with claims brought by an indicted former KPMG partner against KPMG in California state court, and against nine current or former KPMG partners and employees in federal court;
 - in an action brought by a former client in connection with tax advice provided by KPMG;
 - in an appeal to the U.S. Court of Appeals. Skadden persuaded the Second Circuit to grant mandamus where trial court presiding over criminal prosecution had asserted ancillary jurisdiction over the criminal defendants' civil dispute with non-party KPMG. The civil dispute, about an alleged contractual obligation to advance legal fees, was subject to an arbitration clause;
- in obtaining a deferred prosecution agreement, which was a significant victory, in connection with a tax shelter investigation conducted by the United States Attorney's Office, Southern District of New York;
 - KPMG Somekh Chaikin (Israel) in a federal securities law action in Boston disputing a financial statement used in a public offering by an international corporation;
 - in obtaining dismissal of all actions with prejudice for the firm and several of its senior executives, in connection with civil litigation in California state and federal courts, in relation to fraud and related claims brought by a former firm partner; and
 - in obtaining dismissals of substantial claims in connection with lawsuits in state and federal court brought by a former investor in tax shelters;
- a former KPMG partner as defendant in a civil suit;
- two former KPMG partners in connection with a Department of Justice FCPA investigation;
- PricewaterhouseCoopers:
- in numerous SEC inquiries into audit client companies;
 - in an SEC investigation of an audit partner's work on a public company engagement;
 - in the dismissal of a securities fraud class action brought by shareholders of Organogenesis in the District of Massachusetts;
 - in the dismissal of a lawsuit alleging violations of RICO in connection with the plaintiffs' purported interest in more than \$41 million of interest-bearing securities issued by an Ace Group Holdings subsidiary, Capital Re;
 - Coopers & Lybrand separately, then PwC collectively, in a series of revenue recognition cases, including those arising out of bankruptcies of Centennial, Kendall Square and financial scandals involving Boston Safe Deposit & Trust as well as smaller issuers; and
 - in an AICPA inquiry involving a concurring partner and a revenue recognition issue uncovered at an audit client company;
- a Big Four accounting firm in connection with a PCAOB investigation of an audit of a major Southern California company, including conducting an internal investigation;
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- RSM US LLP, formerly McGladrey LLP, in multiple SEC and PCAOB matters relating to inquiries into audit client companies as well as audits themselves and audit independence matters;
 - Crowe LLP, formerly CroweHorwath, in litigation involving the departure of certain partners, as well as regulatory and enforcement inquiries; and
 - the former executive chairman of Hewlett-Packard in successfully securing the dismissal of a federal class action regarding Autonomy Corporation's accounting practices in its US\$11.1 billion acquisition by Hewlett-Packard.

Corporate and Other

- The American Institute of Certified Public Accountants in connection with its strategic relationship with a Web-based affiliate;
- Capgemini Ernst & Young in the outsourcing subcontract of the human resources "tower" in a complex outsourcing transaction;
- Corporation Service Company, Inc. in its acquisition of Koehler Group (Hong Kong);
- Deloitte, Ernst & Young and KPMG in connection with proposals for the establishment of catastrophe insurance programs;
- Deloitte:
 - in the design and operation of a legal entity structured for the different business lines conducted in the U.S.;
 - in the design and operation of the legal entity structured for the Deloitte global organization;
 - in the acquisition of the global strategy consulting business conducted by Monitor Company Group;
- in its global compliance program development and rollout, including policy development and training;
- regarding various banking and other financing matters; and
- in its acquisition of the tax business of Arthur Andersen and in connection with negotiating various software and technology license agreements with Arthur Andersen arising from Deloitte's acquisition of certain partners from Arthur Andersen's global tax practice;
- Ernst & Young with all of its private placements, credit facilities and partner capital loan facilities since the 1980s, including its existing: five-year and 364-day credit facilities, partner capital loan facility, 1997 note agreements and 2001 note agreements; and
- TMF Group Holding B.V. (the Netherlands) in connection with the refinancing of its existing indebtedness, which included: the issuance of €405 million of floating rate senior secured high-yield bonds and €175 million of fixed rate senior high-yield bonds in conjunction with the establishment of a super senior revolving credit facility of up to €70 million.

Thought Leadership

Our attorneys are often quoted on and speak about current topics relating to professional regulatory and enforcement matters of interest to the accounting industry. We also frequently author timely articles to keep our clients abreast of new developments in the industry, such as new IRS accounting rules, recent regulatory and enforcement actions that impact auditors and case decisions that may affect accounting firms.