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RUSSELL GRIGSBY Claimant, V. PROTRADER GROUP MANAGEMENT, L.L.C., PROTRADER GROUP LIMITED PARTNERSHIP, INSTINET GROUP, INC., DAVID R. BURCH, DAVID D. JAMAIL, ANDREW S. KERSHNER, JOHN A. McENTIRE, OVERUNDER, LLC, ZONE TRADING PARTNERS, LLC and ZONE EQUITY PARTNERS, LP, Respondents.	§ § § § § § § § § § § § § § §	**AMERICAN** **ARBITRATION** **ASSOCIATION**

CLAIMANT'S BRIEF REGARDING DUTIES OWED BY PARTNERS AND CONTROLLING SHAREHOLDERS AND THE IMPACT OF THE TEXAS REVISED PARTNERSHIP ACT

This brief addresses the level of duty owed among partners and controlling shareholders. While the Texas Revised Texas Revised Partnership Act clarified that partners do not owe trustee duties to one another, they continue to owe the duties of full disclosure, loyalty, good faith, candor and fair dealing to another, and these duties include the duty to pay a fair price in a partnership buy-out.

A. Duties Owed under General Texas Partnership Law

Both the Texas Revised Partnership Act ("TRPA"), art. 6 132b Tex. Rev. Civ. Stat., effective January 1, 1999, and its predecessor, the Texas Uniform Partnership Act ("TUPA") contain provisions that the Partnership Act is supplemented by the common law. *See* section 1.04(a) of the TRPA and section 5 of the TUPA. Section 1.04(a) of the TRPA states: "Unless displaced by a

particular provision of this Act, the principles of law and equity supplement this Act." See art. 6132b-1.04(a). The almost identically worded predecessor to this provision has been interpreted to mean that "common law rules continue in force in any case not provided for in the Act." *Chien v. Chien*, 759 S.W.2d 484, 491 (Tex. App.-Austin 1988, no writ). Thus, common law partnership duties continue, unless the TRPA expressly indicates that a particular duty has been displaced.

Texas courts of appeals have consistently recognized that under both the Texas Uniform Partnership Act and the common law, partners have a duty to one another to make full disclosure of all matters affecting the partnership. *Brosseau v. Ranzau*, 81 S.W.3d 38 1, 394 (Tex. App.-Beaumont, *2002; Bohatch v. Butler & Binion*, 905 S.W.2d 597, 602 (Tex. App.- Houston [14th Dist.] 1995), aff'd, *977* S.W.2d *543* (Tex. 1998); *Hawthorne v. Guenther*, 917 S.W.2d 924,934 (Tex. App.-Beaumont 1996, writ denied); Tex.Rev.Civ. Stat. Ann. art. 6132b § 20 (Vernon 1970). Partners also owe one another a strict duty of good faith and candor. *Id.* Section 20 of the TUPA, which requires partners to disclose "full information of all matters pertaining to the partnership," was carried forward into Section 4.02 of the TRPA. Thus, it is beyond dispute that the TRPA did not in any way alter or displace a partner's statutory and common law duty to make full and complete disclosure.

Partners also owe to each other a common law duty of good faith and fair dealing. The Texas Supreme Court stated:

> We have long recognized as a matter of common law that "[t]he relationship between ... partners... is fiduciary in character, and imposes upon all the participants the obligation of loyalty to the joint concern and of the utmost good faith, fairness, and honesty in their dealings with each other with respect to matters pertaining to the enterprise." *Fitz-Gerald v. Hull*, 150 Tex. 39,237 S.W.2d 256,264 (1951).

Bohatch v. Butler & Binion, 977 S.W.2d 543, 545 (Tex. 1998). The Texas Supreme Court has also recognized a partner's duty of good faith and fair dealing requires a partner purchasing another partner's interest to pay fair consideration:

> This necessity for good faith and the making of a full disclosure of all important information applies in the case of sale by one partner to another of his interest in the partnership. Such a sale will be sustained only when it is made in good faith, for a **fair considerationand** on a full and complete disclosure of all important information as to value.

Johnson v. Peckham, 132 Tex. 148,120 S.W.2d *786,787 (1938); see also Johnson v. Buck, 540* S.W.2d 393, 399 (Tex. App.-Corpus Christi 1976, writ ref'd n.r.e.) ("Partners do not deal with each other at arm's length, and in a sale by one partner to another of his interest in the partnership, . . . , when challenged, will be sustained only when it is made in good faith, for **fair considerationand** on a full and complete disclosure of all information as to value.") (emphasis added). This duty to pay fair consideration does not derive from trustee-like obligations; rather, as the excerpt above from *Johnson v. Peckham* confirms, it is part and parcel of the basic duties of good faith and fair dealing.

Respondents and their expert Amon Burton appear to contend that Section 4.04(f) of the TRPA displaced a partner's common law duty of good faith and fair dealing and effectively overruled *Johnson v. Peckham*, 132 Tex. 148, 120 S.W.2d 786,787 (1938). Section 4.04(f) of the TRPA states:

> Trustee Standard Inapplicable. A partner, in that capacity, is not a trustee and is not held to the same standards as a trustee.

The Bar Committee Comment to section 4.04 provides:

> Unlike the title of TUPA § 2 1, but like its text, Section 4.04 does not use the term "fiduciary." This section defines partner duties and implies that they are not to be expanded by loose use of "fiduciary" concepts from other contexts or by the rhetoric of some prior cases. Similarly, subsection (f) specifically states that a partner as such is not a trustee and is not held to the same standards as a trustee, thus further attempting to restrict reliance on the unfortunate language of prior law. The term "fiduciary" is inappropriate when used to describe the duties of a partner because a

> partner, unlike a true trustee, may legitimately pursue the partner's own self interest and not solely the interest of fellow partners or the partnership. . . .
>
> As noted above, subsection (f) specifically negates the trustee standard that has sometimes been applied to partners.

Neither the statute nor its comment states that a partner's common law duty of good faith and fair dealing has been displaced or abrogated. Rather, the statute and its comment only indicate that a partner does not have the same fiduciary duty as a trustee, that is, not to pursue his self interest or place his interest before that of his beneficiary. *See Slay v. Burnett Trust,* 187 S.W.2d 377, 378-79 (Tex. 1945) (duty of loyalty prohibits trustee from using the advantage of his position to gain any benefit for himself at the expense of his cestui que trust and from placing himself in any position where his self-interest will or may conflict with his obligations as trustee).

The Texas Supreme Court has recognized that the "duty of good faith and fair dealing is ***not the same*** as the more onerous duty requiring a fiduciary to place the interest of the other party before his own:

> Although a fiduciary duty encompasses at the very minimum a duty of good faith and fair dealing, the converse is not true. The duty of good faith and fair dealing merely requires the parties to "deal fairly" with one anther and does not encompass the often more onerous duty which requires a fiduciary to place the interest of the other party before his own, often attributed to a fiduciary duty.

CrimTruck & Tractor Co. v. Navistar International Transportation Corp., 823 S.W.2d 591, 594 (Tex. 1992). Thus, while section 4.04(f) of the TRPA may have clarified that partners do not owe one another trustee's duties, it has not displaced the "duty of good faith and fair dealing" recognized in *Johnson v. Peckham.* In fact, *Johnson v. Peckham* has been cited as authoritative by a Texas court of appeals as recently as May 22, 2003. *See Voght v. Warnock*, 107 S.W.3d 778, 782-83 (Tex. App.-El Paso 2003). Furthermore, the 2002 Edition of the Business Texas Pattern Jury Charge, page

111-12, specifically cites *Johnson v. Peckham* and incorporates its fairness requirement into PJC 104.2. See *id.* (setting forth partnership duties).

Indeed, in *Lawton v. Nyman,* 2002 WL 221621 (D.R.I. 2002), a case with facts remarkably similar to those here, the Court explained that a partner's duty of full disclosure is broader than that under the securities laws:

> When directors of a closely held corporation are purchasing a minority stockholder's shares, fiduciary duty imposes an obligation of "complete candor" to disclose "all information in their possession 'germane' to the transaction." O'Neal & Thompson, O'Neal's Close Corporations § 8.12 at 129 (3d ed. 1995 Supp.). The fiduciary duty of disclosure is more stringent and far-reaching than the duty of disclosure imposed by the securities laws. Thus, corporate officers who contemplate a possible sale of the company must reveal that possibility to minority stockholders from whom they seek to purchase shareseven ***though sale negotiations have not yet taken place.*** *See Mansfield Hardwood Lumber Co. v. Johnson, 263* F.2d 748,756 (5th Cir. 1959).

Id. at * __.[1]

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[1] The fiduciary duties Respondents owed continued after the May 1, 2000 reorganization of ProTrader into a Delaware limited partnership. Texas law applies because, even after the reorganization, Texas is still the state with most significant relationship to this controversy. In any event, Delaware law regarding fiduciary obligations of partners is the same as Texas law. In fact, a Delaware court even cited Texas law as authoritative on this point. *See Sussex Life Care Associates, v. Strickler,* 1998 W.L 156833 (De. Ch. 1989) ("There can be no question but that partners owe fiduciary duties to their fellow partners, *Boxer v. Husky Oil Co.,* Del.Ch., 429 A.2d 995 (198 1), and this duty has been held to encompass a duty of full disclosure by a selling partner to the buying partners. *Johnson* v. *Buck,* Tex. Ct. App., 540 S.W.2d 393 (1976)"); *Boxer* v. *Husky Oil* Co., Del.Ch., 429 A.2d 995, 997 (198 1) ("The fiduciary duty of fair dealing by a general partner to a limited partner is no less than that owed by a director to a shareholder. The form of the enterprise does not diminish the duty of fair dealing by those in control of the investments"); *Sonet v. Timber Co.,* Del. Ch., *722* A.2d *3* 19, *322-23* (1998); *In re USA Cafes, LP Litigation,* Del. Ch., 6900 A.2d 43, 48-50 (1991).

> On the other hand, the business judgment rule generally protects the actions of general partners, affording them a presumption that they acted on an informed basis and in the honest belief that they acted in the best interest of the partnership and the limited partners. *See Dean v. Dick,* Del Ch., C.A. No. 16566, Mem Op. at 8-14, Chandler, C. (June 10, 1999). A plaintiff can rebut the presumption by showing that the general partner de rived a personal benefit from a transaction or engaged inself

Thus, while a partner may not have a duty to put another partner's interest before his own, he still has a duty of good faith and fair dealing and to pay fair consideration his partner's interest. Section 4.04(f) of the TRPA does not permit a partner to oppress and coerce another partner to sell his partnership interest for an unfair price.

B. Duties Owed by General Partner of Limited Partnership

Furthermore, Section 4.04(f) of the TRPA did not alter the fiduciary duties that a managing partner or a general partner in limited partnership *owes its limitedpartners,* which are the highest that are recognized in the law. Before the Letter of Intent was signed on April 30, 2000 and the reorganization occurred, Grigsby,Jamail, Burch andKershner were not merely de facto partners and shareholders in Texas Subchapter S corporation, Cornerstone Securities Corporation, They were also partners and managers in a Texas limited partnership, Cornerstone Securities Partners, L.P. ("Cornerstone LP"), which managed the business of Cornerstone Securities Corporation. Cornerstone LP's general and managing partner was Cornerstone Securities Management LLC. The LLC's Regulations expressly reserved management of the Company to its members. The members and managers of the LLC were Jamail, Burch, Kershner and Grigsby, and they therefore owed the same fiduciary duties that a general partner owes the limited partners in a limited partnership.

These duties are described as follows:

> Managing partners owe their copartners the highest fiduciary duty recognized in the law. *Huffington v. Upchurch, 532* S.W.2d *576, 579* (Tex.1976); *Crenshaw v.* Swenson, 611 S.W.2d 886, 890 (Tex.Civ.App.-Austin 1980, writ ref'd n.r.e.). **Furthermore, in a limited partnership, the general partner stands in the same fiduciary capacity to the limited partners as a trustee stands to the beneficiaries**

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dealing. *See Seaford Funding,* L.P., 672 A.2d at 70. The burden then shifts to the defendant general partner to prove the "entire fairness" of the challenged transaction. *See Nebenzahl,* C.A. No. 132065 at 6. "Under the entire fairness standard of judicial review, the defendant [general partner] must establish that the transaction was the product of both fair dealing and fair price." *Id.*

> **of a trust.** *Crenshaw,* 611 S.W.2d at 890 (citing *Watson v. Limited Partners of WCKT, Ltd.,* 570 S.W.2d 179 (Tex.Civ.App.-Austin 1978, writ ref' d n.r.e.)).

Hughes v. St. David's Support Corp, 944 S.W.2d 423, 425-26 (Tex. App.-Austin 1997, writ denied) (emphasis added). This trustee like fiduciary duty also extends to the managing or controlling partner of the managing partner of a limited partnership. *In re Bennett, 989* F.2d 779, 790 (5th Cir. 1993). Therefore, although partners in a general partnership may not owe each other trustee-like fiduciary duties, it is well established under Texas law that a managing or general partner of a limited partnership does owe such duties because it has complete control of the partnership's assets and business.

Similarly, after Grigsby was ousted from his position of having any management or control over the business ofProTrader, the Respondents who were the managers of theProTrader's general partner owed Grigsby the highest fiduciary duty recognized at law. At a minimum, this duty encompassed the duty of good faith and fair dealing recognized in *Johnson v. Peckham*, 132 Tex. 148, 120 S.W.2d 786,787 (1938).

This is also the law in Delaware. It is well settled under Delaware law that the general partner of a Delaware limited partnership[2] and the directors of a corporate General Partner who control the partnership,[3] like the directors of a Delaware corporation, have the fiduciary duty to manage the partnership in the partnership's interests and the interests of the limited partners. See *Boxer* v. *Husky Oil* Co., Del.Ch., 429 A.2d 995, 997 (1981). As a result, Delaware law requires the general partners of limited partnerships to exercise due care and to act in the best interest of the

[2] *Sonet v. Timber Co.,* Del. Ch., 722 A.2d 319, 322-23 (1998) (citing, *Boxer v. Husky Oil Co.,* Del. Ch., 429 A.2d 995, 997 (198 1)).

[3] *In re USACafes, L.P. Litigation,* Del. Ch., 600 A.2d 43, 48- 50 (1991).

partnership and the limited partners! Courts have also recognized that the fiduciary obligations of a general partner prohibit it from attempting to "squeeze out" a limited partner. See *Labovitz v. Dolan*, 545 N.E.2d 304, 3 10, 3 13- 14 (Ill. App. 1989) (Plaintiffs "entitled to a trial in which Dolan must prove he acted fairly and not as his limited partners' business adversary").

C. Duties Owed by Controlling Shareholders, Directors and Officers of Close Corporation

Texas courts have also recognized and enforced the fiduciary obligations that majority shareholders and officers owe minority shareholders in a close corporation. See, e.g., *DeBord v. Circle Yof Yoakum, Inc.,* 951 S.W.2d 127, 133 (Tex. App.-Corpus Christi 1997), *rev'd on other grounds, 967* S.W.2d *352* (Tex. *1998);Gaither* v. *Moody, 528* S.W.2d 875, 877 (Tex. App.-Houston [14th Dist.] 1975, writref'd n.r.e.). Additionally, officers and directors of a closely held corporation, such as McEntire, owe fiduciary duties when negotiating to buy a shareholder's interest:

> It is well established that corporate officers and directors owe a fiduciary duty of good faith and fair dealing to the corporation and its shareholders and that such duty imposes a standard of conduct that is "stricter than the morals of the marketplace." (citation omitted). In the case of a closely held corporation, the duty is enhanced and has been described as one of "utmost good faith and loyalty," (citation omitted), which is "similar to [the duty] imposed upon partners in a partnership." (citation omitted). . . .
>
> When directors of a closely held corporation are purchasing a minority stockholder's shares, fiduciary duty imposes an obligation of "complete candor" to disclose "all information in their possession 'germane' to the transaction." O'Neal & Thompson, O'Neal's Close Corporations § 8.12 at 129 (3d ed. 1995 Supp.).

Lawton, 2002 WL 221621 at *- -

The fairness requirement incorporated into the Texas Pattern Jury Charge has also been imposed by Texas courts in the context of the buyout of a minority shareholder. In *Miller v. Miller,*

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[4] *See Nebenzahl v. Miller,* Del. Ch., C.A. No. 13206, mem. op. at 5-6, Steele, V.C. (Aug., 29, 1996) ("Delaware law requires directors to exercise due care in carrying out their fiduciary duties and to act in the best interest of the shareholders and the corporation.") citing *Cede & Co. v. Technicolor, Inc.*, Del.Supr., 634 A.2d 345,360 (1993)).

700 S.W.2d 941 (Tex. App.-Dallas 1985, writ ref'd n.r.e.), the court of appeals held that the recognition of a fiduciary duty in that case was based, not only on the personal relationship between Howard and Judy, but also on Howard's position as a founder, officer, and director of InteCom. *Id.* at 945. In addition, the court held that "in establishing the fairness of a transaction between a fiduciary and his beneficiary, some of the most important factors are whether the fiduciary made a full disclosure, ***whether the consideration is adequate*** and whether the beneficiary had the benefit of independent advice." *Id.* Thus, for a transaction to be fair, not only must full disclosure of material facts be made, but the consideration must be fair and adequate.

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I hereby certify that a true and correct copy of the above and foregoing Claimant's Brief Regarding Partnership Duties and the Impact of the Texas Revised Partnership Act has been served on the following counsel via hand delivery on this _____ day of November, 2003:

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BIOGRAPHY

Martin J. Siegel was born and raised in Houston. He earned a B.A., Highest Honors, from The University of Texas at Austin in 1988, where he majored in the Plan II Liberal Arts Honors Program and graduated *Phi Beta Kappa.*

Siegel received his law degree, *Cum Laude*, from Harvard Law School in 1991. Following law school, he served as law clerk to the Honorable Irving R. Kaufman on the United States Court of Appeals for the Second Circuit in New York City.

From 1992 to 1994, Siegel was an associate in the Washington, DC office of Jenner & Block. At Jenner, he worked on appellate, commercial, intellectual property, and environmental matters. He assisted in the Supreme Court briefing for respondents in *U.S. Nat'l Bank of Oregon v. Indep. Ins. Agents of America*, 508 U.S. 439 (1993); represented MCI in patent, antitrust and other matters; and helped develop the evidence for, draft and present a petition for post-conviction relief to the Maryland state trial court on behalf of death row inmate Kevin Wiggins. Although the court denied the petition, the U.S. Supreme Court eventually granted it in a decision vacating the death sentence and setting new standards for counsel in the sentencing phase of capital cases. *See Wiggins v. Smith*, 539 U.S. 510 (2003).

From 1995 to 2000, Siegel served as an Assistant United States Attorney in the Civil Division in the Southern District of New York, where his practice focused on bringing civil rights actions, defending statutes from constitutional challenge, and defending federal agencies and officers from suits based on government action. Civil rights cases brought by Siegel include a complaint under the Voting Rights Act following fraud in a Bronx school board vote, resulting in a new election; some of the first cases in the United States brought under the Freedom of Access to Clinic Entrances Act; an action based on discriminatory zoning in violation of the Americans with Disabilities Act; and an investigation of the New York City Parks Department for employment discrimination. In a case of first impression, Siegel successfully defended provisions of the 1996 immigration and welfare reform laws (invalidating local rules against disclosing the immigration status of aliens to federal law enforcement) from constitutional attack under the 10th Amendment brought by New York City. *See City of New York and Rudolph Giuliani v. United States and Janet Reno,* 179 F.3d 29 (2d Cir. 1999).

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In all, Siegel tried eight cases in federal district court and briefed and argued twelve appeals to the Second Circuit. He received the Department of Justice's Director's Award for Superior Performance as an Assistant United States Attorney in 1999 for the successful trial defense of the former chief of the CIA's Technical Services Division in a case involving the agency's experimentation with LSD in the early 1950s.

In 2000-01, Siegel was detailed to serve as Special Counsel on the minority staff of the Senate Judiciary Committee, where his responsibilities included drafting and analyzing legislation on election reform, the McCain-Feingold campaign finance bill, criminal justice, immigration and other issues.

From 2001-06, Siegel was a partner at Watts Law Firm in Houston, where he worked on commercial, franchise, patent, trade secret, false advertising, product liability and personal injury litigation. In 2002, he successfully represented Texas beer distributors against Anheuser-Busch after it wrongfully prevented a $60 million sale of their distributorship, achieving a highly favorable confidential settlement. In 2003, he helped represent the founder of a securities trading firm forced out of the business he founded before its sale for $150 million, winning a $43 million arbitral award. In 2005, he successfully represented Stabar Enterprises, a small Austin pet products company, in multiple lawsuits arising from a licensing dispute with one of the country's largest makers of animal products, securing the dismissal of a related suit against Stabar and a favorable confidential settlement that included the sale of the company's assets.

In 2006, Siegel successfully represented the Texas Democratic Party in its suit to prevent the Republican Party of Texas from replacing Tom DeLay on the general election ballot for Congress following DeLay's withdrawal as a candidate. Siegel wrote the Democratic Party's briefs in the Fifth Circuit on an expedited schedule and co-argued the appeal, resulting in a complete victory for TDP's position under the Constitution's Qualifications Clause and state election law and an order barring the replacement.

In 2007, Siegel opened the Law Offices of Martin J. Siegel to focus on appellate advocacy. He remains of counsel to Watts Law Firm.

In 2004 and 2007, *Texas Monthly* named Siegel a "Texas Super Lawyer Rising Star," an award given to lawyers under 40 chosen by other lawyers throughout the state.

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Siegel has written frequently on legal topics. In 2007, he was named to the Board of editors of Litigation, the magazine published by the ABA's Section on Litigation. Siegel's writings include:

- *Zealous Advocacy vs. Truth*, 33 LITIGATION 31 (Fall 2006);
- *The Myth of Dem, GOP Justice*, HOUSTON CHRONICLE, September 10, 2006, at E4;
- *We Don't Have Kings in Texas*, HOUSTON CHRONICLE, May 29, 2005, at E4;
- *Congressional Power over Presidential Elections: The Constitutionality of the Help America Vote Act Under Article II, Section 1*, 28 VERMONT L. REV. 373 (Winter 2004);
- *Bryant Case Tosses a Lifeline to the Laws Against Adultery*, LOS ANGELES TIMES, August 13, 2004, at B13;
- *Why Texas Republicans Should Love the Trial Lawyers*, HOUSTON CHRONICLE, April 20, 2003, at 4C; and
- *For Better or For Worse: Adultery, Crime and the Constitution*, 30 J. FAMILY L. 45 (1991-92).

Siegel has also served as an adjunct professor at the University of Houston Law Center, as a guest lecturer there and at business and graduate school classes at Princeton and UCLA, and as a speaker at CLE seminars and workshops in Houston and elsewhere.

APPELLATE AND BRIEF WRITING EXPERIENCE

Martin Siegel has an extensive background in appellate and trial-level briefing and argument cutting across a broad range of substantive and procedural areas, including constitutional law, commercial disputes, product liability, personal injury, federal preemption, consumer protection, jurisdiction, removal and remand, governmental immunities, employment law and others.

Siegel's experience began as a federal appellate law clerk and deepened over years of representation of corporate defendants, the United States and individual plaintiffs. He has briefed and argued appeals in the United States Courts of Appeals for the Second Circuit and Fifth Circuit, the Texas Supreme Court (briefed only), and several state appellate courts, and has assisted with briefs written for the United States Supreme Court.

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Some of Siegel's more significant cases include:

- *Texas Democratic Party v. Tina Benkiser, Chairwoman of the Republican Party of Texas.* The Texas Democratic Party sued the Republican Party of Texas to prevent it from substituting a new Congressional candidate for Tom DeLay after his withdrawal from the 2006 election. TDP argued that it was too late to substitute candidates, while RPT claimed replacement was permitted because DeLay had moved to Virginia and was therefore constitutionally ineligible to serve. Siegel handled most of the briefing in the district court, wrote the briefs for TDP in the Fifth Circuit on an expedited schedule and shared oral argument with the party's full-time counsel, obtaining a complete vindication of TDP's position that it had standing to bring the case and that DeLay's replacement would violate the Constitution's Qualifications Clause and state election law. *See* 459 F.3d 582 (5th Cir. 2006).

- *City of New York and Rudolph Giuliani v. United States and Janet Reno.* New York City challenged provisions of the 1996 welfare and immigration reform laws that invalidated local rules against disclosing the immigration status of aliens to federal law enforcement. In a case of first impression, the Second Circuit held that the federal provisions do not violate the Tenth Amendment's bars on interfering with state operations or conscripting state officials to carry out federal tasks. *See* 179 F.3d 29 (2d Cir. 1999). Siegel wrote the federal government's trial and appellate briefs and successfully argued the appeal in the Second Circuit.

- *Grigsby v. ProTrader Group Management LLC, et al.* In this arbitration, Grigsby claimed that the defendants violated securities laws and committed minority shareholder oppression by squeezing him out of the company he co-founded shortly before it was sold for $150 million. As part of the team representing Grigsby, Siegel briefed and argued summary judgment motions and other issues, including ratification, duties owed under the Texas Revised Partnership Act, the statute of limitations for 10b-5 claims under Sarbanes-Oxley, standards for recovery for shareholder oppression, and others. The arbitrators accepted Grigsby's legal positions and awarded him $43 million in compensation. Case No. AAA 70 180 00648 02.

- *Barahona v. Toyota Motor Corp., et al.* The plaintiff sued Toyota when his son was rendered a quadriplegic, alleging that the defective design of the Toyota

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Echo's seatback caused the injuries. Toyota twice filed writs of mandamus in the Court of Appeals and once in the Texas Supreme Court attacking various discovery and other rulings. Siegel wrote the plaintiff's responses, obtaining denials of Toyota's petitions. *See* 191 S.W. 3d 498 (Tex. App. – Waco 2006, mandamus denied, Case No. 06-0449, TX Sup. Ct., June 5, 2006). Siegel also briefed several *Daubert,* summary judgment and other motions, resulting in rulings favorable to the plaintiff.

- *Ayala v. Ford Motor Co.* In this wrongful death case, Ford argued that it complied with applicable federal safety standards and was therefore not liable under TEX. CIV. PRAC. & REM. CODE § 82.008(a). When the plaintiffs responded that Ford's inadequate disclosures to NHTSA rebutted the presumption of nonliability under § 82.008(b)(2), Ford replied that subsection (b)(2) is impliedly preempted under the reasoning in *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341 (2001), a position the Sixth Circuit and other courts have adopted. Siegel handled the plaintiffs' briefing, and the district court agreed with the plaintiffs that federal law does not conflict with § 82.008(b)(2) and that *Buckman* preemption applies only to fraud-on-the-agency theories of liability, not traditional state product liability claims. Case No. 2-04CV-395 (E.D. Tex. 2005).

- *Rivera v. Heyman, Secretary, Smithsonian Institution, et al.* Siegel represented the Smithsonian in this employment discrimination case raising the novel question whether the Smithsonian, a unique and independent federal trust instrumentality dating to 1836, is subject to § 501 of the Rehabilitation Act, which covers only executive branch employees. Following Siegel's briefing and argument, the district court agreed with the government that the Smithsonian is not in the executive branch and therefore not subject to § 501. As a result of the case, Congress amended the Act to include the Smithsonian. On appeal, which Siegel also briefed and argued, the Second Circuit upheld the remainder of the district court's decision holding that the plaintiff had no additional remedy under § 504 of the Act – a question on which several circuit courts had split – or state and local civil rights laws. *See* 157 F.3d 101 (2d Cir. 1998).

- *Good Samaritan Hospital Regional Medical Center, et al. v. Shalala.* Three hospitals and Medicare providers sued HHS seeking to compel review of a decision not to reopen the hospitals' claims for reimbursement of various significant expenses. Siding with the government after Siegel's briefing and argument, the Second Circuit held that jurisdiction to undertake the requested review was lacking, and that challenged HHS regulations were permissible in

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light of the Medicare Act. The Second Circuit reached this conclusion despite Ninth Circuit precedent to the contrary. *See* 85 F.3d 1057 (1996).

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