Enron’s Banks Escape Liability: Reconsidering the Accounting Profession’s Opposition to Private Party Litigation to Prevent Third-Parties from Assisting in Fraud

Thomas C. Pearson*

Abstract

Discussion is needed about the appropriateness of having several of Enron’s investment banks escape liability after participating in fraudulent schemes with Enron. This article takes issue with the appropriateness of the AICPA’s legal position in Stoneridge Investment Partners v. Scientific America, which the Supreme Court decided in 2008 in a 5–3 decision. The AICPA’s concern was about liability for third parties related to services other than the annual audit. The author presents the legal background on securities law on fraud by third parties and provides analysis. The author believes the AICPA’s position opposing private party lawsuits against third party fraudsters was a strategic mistake for a service profession which relies on integrity and attempts to ensure reliable financial reporting. Refocusing the accounting profession on investor interests requires supporting reasonable legal accountability for any third parties engaged in financial fraud.

Keywords: Third party liability; fraud; private party litigation; Enron’s banks; financial fraud.

* The author is Professor of Accounting at the University of Hawaii at Manoa.