

2003 – 2004 REVIEW

excellence leadership citizenship



---

O'MELVENY & MYERS LLP

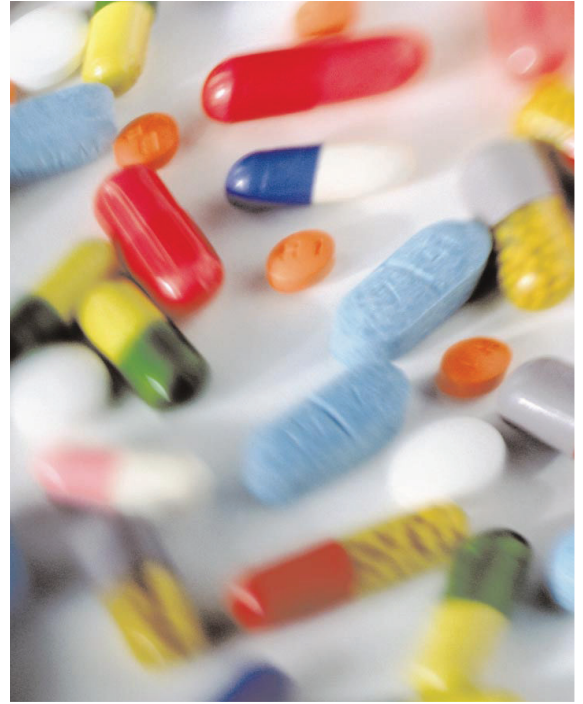
## RITE AID CFO CRIMINAL ENFORCEMENT PROCEEDINGS

In late 1999 the U.S. Department of Justice ("DOJ") and the Securities and Exchange Commission ("SEC") commenced an investigation into the accounting practices of Rite Aid Corporation. The government eventually alleged that several former executives had conducted a "wide-ranging accounting fraud scheme" and overstated the company's income "by massive amounts." According to prosecutors, most of the alleged crimes were related to the accounting irregularities that led Rite Aid to restate its 1998 and 1999 earnings by \$1.6 billion, which at the time was the largest restatement of earnings in U.S. history.

Early on in the investigative process in the summer of 1999, O'Melveny & Myers was retained to represent former Rite Aid Chief Financial Officer Frank Bergonzi in connection with various probes and eventual suits (civil, U.S. Department of Labor, SEC, and DOJ). Drawing on the talents of our white collar lawyers, with SEC, U.S. Department of Labor, and securities class action experience, we eventually negotiated favorable outcomes for all matters.

In June 2003, Mr. Bergonzi was awaiting the start of his trial on 31 counts related to the government's first criminal use of alleged earnings management as a predicate for securities, mail, and wire fraud charges. His two co-defendants, the former Chief Executive Officer ("CEO") and the General Counsel, were additionally charged with obstruction of justice. If convicted, Mr. Bergonzi faced more than 18 years' imprisonment under federal sentencing guidelines which provide minimal discretion to sentencing judges.

For months leading up to jury selection, a dedicated team of O'Melveny attorneys set to work literally around the clock, reviewing millions of records, organizing thousands of exhibits, preparing dozens of cross-examination outlines, and developing motions *in limine*. After the jury was picked, but before the government called its first witness, the O'Melveny team secured a hearing on the qualifications of the government's accounting expert. After a half-day hearing which resulted in substantial limitations on the scope of the proffered testimony, the government and O'Melveny lawyers spent almost 36 hours negotiating a last-minute guilty plea by our client which limited his criminal exposure to a single count and a maximum statutory penalty of five years in jail. The agreement provided for his cooperation against co-defendants and others responsible for wrongdoing. The plea, which stunned observers and his co-defendants, led to the guilty pleas of the CEO and a corporate sales vice president who was awaiting a later trial date. Mr. Bergonzi later testified at the trial of the General Counsel, who was convicted on all theories and most counts of the indictment. Mr. Bergonzi continues to cooperate with the government and is awaiting sentencing.



ACCORDING TO PROSECUTORS, MOST OF THE ALLEGED CRIMES WERE RELATED TO THE ACCOUNTING IRREGULARITIES THAT LED RITE AID TO RESTATE ITS 1998 AND 1999 EARNINGS BY \$1.6 BILLION, WHICH AT THE TIME WAS THE LARGEST RESTATEMENT OF EARNINGS IN U.S. HISTORY.