

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5491

To protect investors by fostering transparency and accountability of attorneys  
in private securities litigation.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2006

Mr. BAKER (for himself, Mr. MCHENRY, and Mr. HENSARLING) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To protect investors by fostering transparency and  
accountability of attorneys in private securities litigation.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Securities Litigation  
5 Attorney Accountability and Transparency Act”.

6 **SEC. 2. LOSING PLAINTIFF’S ATTORNEY PAYS.**

7       (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
8 21D(c) of the Securities Exchange Act of 1934 (15 U.S.C.

1 78u-4(c) is amended by adding at the end the following  
2 new paragraph:

3 “(4) ASSESSMENT OF FEES AND EXPENSES.—

4 “(A) DETERMINATION REQUIRED.—If the  
5 court in any private action arising under this  
6 title enters a final judgment against a plaintiff  
7 on the basis of a motion to dismiss, motion for  
8 summary judgment, or a trial on the merits,  
9 the court shall, upon motion by the defendant,  
10 determine whether—

11 “(i) the position of the plaintiff was  
12 not substantially justified;

13 “(ii) imposing fees and expenses on  
14 the plaintiff’s attorney would be just; and

15 “(iii) the cost of such fees and ex-  
16 penses to the defendant is substantially  
17 burdensome or unjust.

18 “(B) AWARD.—If the court makes the de-  
19 terminations described in clauses (i), (ii), and  
20 (iii) of subparagraph (A), the court shall award  
21 the defendant reasonable fees and other ex-  
22 penses incurred by the defendant and impose  
23 such fees and expenses on the plaintiff’s attor-  
24 ney.

1           “(C) BASIS OF DETERMINATION REGARD-  
2           ING POSITION; BURDEN OF PERSUASION.—The  
3           determination of whether the position of the  
4           plaintiff was substantially justified shall be  
5           made on the basis of the record in the action  
6           for which fees and other expenses are sought,  
7           but the burden of persuasion shall be on the de-  
8           fendant.”.

9           (b) SECURITIES ACT OF 1933.—Section 27(c) of the  
10          Securities Act of 1933 (15 U.S.C. 77z–1(c)) is amended  
11          by adding at the end the following new paragraph:

12           “(4) ASSESSMENT OF FEES AND EXPENSES.—

13           “(A) DETERMINATION REQUIRED.—If the  
14           court in any private action arising under this  
15           title enters a final judgment against a plaintiff  
16           on the basis of a motion to dismiss, motion for  
17           summary judgment, or a trial on the merits,  
18           the court shall, upon motion by the defendant,  
19           determine whether—

20                   “(i) the position of the plaintiff was  
21                   not substantially justified;

22                   “(ii) imposing fees and expenses on  
23                   the plaintiff’s attorney would be just; and

1           “(iii) the cost of such fees and ex-  
2           penses to the defendant is substantially  
3           burdensome or unjust.

4           “(B) AWARD.—If the court makes the de-  
5           terminations described in clauses (i), (ii), and  
6           (iii) of subparagraph (A), the court shall award  
7           the defendant reasonable fees and other ex-  
8           penses incurred by the defendant and impose  
9           such fees and expenses on the plaintiff’s attor-  
10          ney.

11          “(C) BASIS OF DETERMINATION REGARD-  
12          ING POSITION; BURDEN OF PERSUASION.—The  
13          determination of whether the position of the  
14          plaintiff was substantially justified shall be  
15          made on the basis of the record in the action  
16          for which fees and other expenses are sought,  
17          but the burden of persuasion shall be on the de-  
18          fendant.”.

19 **SEC. 3. DISCLOSURES OF CONFLICTS OF INTEREST BE-**  
20 **TWEEN PLAINTIFF AND ATTORNEYS.**

21          (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
22 21D(a) of the Securities Exchange Act of 1934 (15 U.S.C.  
23 78u–4(a)) is amended by adding at the end the following  
24 new paragraph:

1           “(10) DISCLOSURES REGARDING CONFLICTS OF  
2 INTEREST.—In any private action arising under this  
3 title, each plaintiff and any attorney for such plain-  
4 tiff shall provide sworn certifications, which shall be  
5 personally signed by such plaintiff and such attor-  
6 ney, respectively, and filed with the complaint, that  
7 identifies any conflict of interest, including any di-  
8 rect or indirect payment, between such attorney and  
9 such plaintiff and between such attorney and any af-  
10 filiated person of such plaintiff. The court shall  
11 make a determination of whether such conflict is  
12 sufficient to disqualify the attorney from rep-  
13 resenting the plaintiff.”.

14           (b) SECURITIES ACT OF 1933.—Section 27(a) of the  
15 Securities Act of 1933 (15 U.S.C. 77z–1(a)) is amended  
16 by adding at the end the following new paragraph:

17           “(10) DISCLOSURES REGARDING CONFLICTS OF  
18 INTEREST.—In any private action arising under this  
19 title, each plaintiff and any attorney for such plain-  
20 tiff shall provide sworn certifications, which shall be  
21 personally signed by such plaintiff and such attor-  
22 ney, respectively, and filed with the complaint, that  
23 identifies any conflict of interest, including any di-  
24 rect or indirect payment, between such attorney and  
25 such plaintiff and between such attorney and any af-

1        filiated person (as such term is defined in section  
2        2(a)(3) of the Investment Company Act of 1940 (15  
3        U.S.C. 80a–3(a)(3))) of such plaintiff. The court  
4        shall make a determination of whether such conflict  
5        is sufficient to disqualify the attorney from rep-  
6        resenting the plaintiff.”.

7        **SEC. 4. SELECTION OF LEAD COUNSEL.**

8        (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
9        21D(a)(3)(B)(v) of the Securities Exchange Act of 1934  
10       (15 U.S.C. 78u–4(a)(3)(B)(v)) is amended by adding at  
11       the end the following: “In exercising the discretion of the  
12       court over the approval of lead counsel, the court may em-  
13       ploy alternative means in the selection and retention of  
14       counsel for the most adequate plaintiff, including a com-  
15       petitive bidding process.”.

16       (b) SECURITIES ACT OF 1933.—Section  
17       27(a)(3)(B)(v) of the Securities Act of 1933 (15 U.S.C.  
18       77z–1(a)(3)(B)(v)) is amended by adding at the end the  
19       following: “In exercising the discretion of the court over  
20       the approval of lead counsel, the court may employ alter-  
21       native means in the selection and retention of counsel for  
22       the most adequate plaintiff, including a competitive bid-  
23       ding process.”.

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