

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

<p>TOM FRAME et al., Plaintiffs and Appellants, v. PRICEWATERHOUSECOOPERS LLP, Defendant and Respondent.</p>

<p>A106383 (Alameda County Super. Ct. No. 2002056106) ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]</p>

THE COURT:

It is ordered that the opinion filed herein on November 28, 2005, be modified as follows:

1. On page 19, the first full paragraph, beginning “The issue” is deleted and replaced with the following paragraph:

“The issue, in this context, is therefore the standard of care—a factual matter. As a regulatory standard, GAAS is relevant to PwC’s standard of care, but the provisions on which PwC relies do not necessarily control given the factual disputes in this case. The application of the GAAS provisions in the matter before us is a matter of some debate, since the GAAS sections cited by PwC do not refer specifically to limited partnerships—whose owners have the right to receive copies of financial statements and auditor’s reports, the right to inspect the partnership’s books and records, and the power to remove the general partner. (Corp. Code, § 15636, subd. (f)(2).)”

2. On page 31, the last sentence in the first full paragraph, beginning “This has no merit” is deleted and replaced with the following two sentences:

“In the matter before us, however, the engagement agreement explicitly and

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part D.

unambiguously stated that the audits would not be conducted or planned in contemplation of reliance by any third party. In deciding whether there are intended third party beneficiaries to the contract, we cannot imply a term that would be contrary to this express term and the parties' manifested intent on this subject.”

There is no change in the judgment.

All petitions for rehearing are denied.