

No. 32515 – *State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General v. Bear, Stearns & Co., Inc.; Citigroup Global Markets, Inc. (fka Salmon Smith Barney, Inc.); Credit Suisse First Boston LLC; Goldman, Sachs & Co.; Lehman Brothers, Inc.; Merrill Lynch; J. P. Morgan Securities, Inc., Morgan Stanley & Co., Inc.; UBS Warburg, LLC; and U. S. Bancorp Piper Jaffray, Inc.*

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., concurring, in part, and dissenting, in part:

I concur with the majority opinion to the extent that the Attorney General’s authority is apparently limited in the underlying case by the fact that the defendants below had already reached a global settlement of securities law violation charges – with the West Virginia auditor as a party to the settlement. Under various equitable principles – estoppel, etc. – this settlement probably inures to some degree to the defendant’s benefit.

I also concur with the majority in recognizing the primary authority of the Auditor to regulate the legitimate business of the sale of securities in our State.

I part company with the majority opinion to the extent that it might be erroneously construed to shield obvious consumer scams that “masquerade” as selling securities from the Attorney General’s scrutiny.

An example: an ad in the paper selling purported shares in a non-existent gold mine. This is not misconduct by a *bona fide* securities dealer. It’s a clear consumer scam, and, of course, the Legislature intended the Attorney General’s Consumer Protection Division to prosecute such scams.

Accordingly, I concur, in part, and dissent, in part.