

Charles J. Odenweller, Jr., Esquire
Regional Administrator
Securities and Exchange Commission
1370 Ontario Street
Cleveland 13, Ohio

Re: David Colby v. Raymond Klune and
20th Century Fox Film Corporation

Dear Mr. Odenweller:

This refers to your letter of February 8, 1950, in regard to the above matter.

In the Colby v. Klune case Judge Frank indicated that Rule X-3B-2 of the Securities Exchange Act is too restrictive, and if that Rule is not binding upon the courts, at least the Second Circuit would adopt a definition of "officer" as used in Section 16(a) of the Act which would include:

"inter alia, a corporate employee performing important executive duties of such character that he would be likely, in discharging these duties, to obtain confidential information about the company's affairs that would aid him if he engaged in personal market transactions."

Even if it should be held that the court must follow the definition of "officer" contained in Rule X-3B-2, Judge Frank disagrees with the opinion of the General Counsel contained in Release No. 2687 insofar as that opinion indicates that a person is not an officer so long as his duties are under "supervision." It appears, therefore, that the court's opinion casts some doubt upon the definition of "officer" heretofore followed by the Commission.

I believe some reexamination of the rules we have adopted under Section 16 will be undertaken when and if the bill now before Congress to amend the Securities Exchange Act to extend to investors in unregistered securities the benefits of Sections 12, 13, 14 and 16 (the Frear Bill) is enacted. Pending that reexamination, the Commission will not bring any action against a registrant who relies upon Rule X-3B-2 and Release 2687. However, I believe the Colby v. Klune opinion should be called to the attention of persons requesting the Commission's opinion upon this problem, for officers who are within the scope of Judge Frank's definitions risk the tolling of the statute of limitations

applicable to Section 16 (b) liability during any period when reports are not filed with the Commission as provided in Section 16 (a).

Very truly yours,

Baldwin B. Bane, Director
Division of Corporation Finance

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