Pomerantz scored a significant victory for investors in *In re Petrobras Sec. Litig.* (2d Cir. July 7, 2017), one of the largest securities class actions pending in the United States. The case involves the alleged biggest corruption scandal in the history of Brazil, which, according to plaintiffs, has ensnared not only Petrobras' former executives but also Brazilian politicians, including former presidents and at least one third of the Brazilian Congress. According to plaintiffs, defendants’ fraudulent scheme involved billions of dollars in kickbacks, tens of billions of dollars in overstated assets, as well as significant losses to Petrobras investors.

In a February 2, 2016 Opinion and Order, the District Court certified all the classes proposed by plaintiffs, encompassing not only purchasers of Petrobras American Depository Receipts, but also Petrobras bondholders who acquired securities pursuant to domestic transactions. Plaintiffs asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2) and 15 of the Securities Act of 1933. Defendants appealed the District Court’s certification opinion on multiple grounds, including for failure to satisfy the requirement of ascertainability and for failure to satisfy the burden of showing that the Petrobras securities at issue traded in efficient markets. The Second Circuit accepted the appeal and largely rejected defendants’ arguments, sending the case back to the District Court for further proceedings.

The Second Circuit’s decision is important and favorable precedent in several respects. First, in an issue of first impression, the Second Circuit squarely rejected defendants’ invitation to adopt the heightened ascertainability requirement promulgated by the United States Court of Appeals for the Third Circuit, which would have required plaintiffs to demonstrate that determining membership in a class is “administratively feasible.”  The Second Circuit’s rejection of this standard is not only a victory for bondholders in securities class actions, but also plaintiffs in consumer fraud class actions and other class actions where documentation regarding Class membership is not readily attainable.

With respect to Petrobras’ bondholders, the Court vacated the District Court’s granting of class certification, but only to the extent that it did not perform an analysis regarding the impact of the Supreme Court’s *Morrison* decision on the predominance requirement of class certification. Specifically, the Second Circuit required the District Court to analyze whether “common answers” to whether a transaction occurred in the United States could be ascertained via common proof.  The record in this case easily supports such a determination. Indeed, as the Second Circuit acknowledged, “the district court might properly certify one or more classes that capture all of the Securities holders who fall within the Classes as currently defined.”

The Second Circuit also refused to adopt a requirement, urged by defendants, that all securities class action plaintiffs seeking class certification prove through direct evidence (*i.e.*, via an event study) that the prices of the relevant securities moved in a particular direction in response to new information.  Reaffirming the Supreme Court’s guidance in *Halliburton II* that the burden for plaintiffs seeking class certification “is not an onerous one,” the Second Circuit rejected the notion that complicated event studies be submitted by Plaintiffs at the class certification stage. The Court agreed with plaintiffs that “event studies offer the seductive promise of hard numbers and dispassionate truth, but methodological constraints limit their utility in the context of single-firm analyses.”

Jeremy Lieberman, Managing Partner of Pomerantz commented: “We are very pleased with the Second Circuit’s decision today, which provides important precedent for both domestic and foreign investors seeking redress for securities fraud impacting the U.S. capital markets. Plaintiffs allege that defendants engaged in a sweeping fraud lasting nearly a decade, which caused billions of dollars in losses to Petrobras investors, and hobbled the political and economic framework in Brazil, one of the largest economies in the world. This decision represents a victory for class action plaintiffs in securities, antitrust and consumer cases. Most significantly, the Second Circuit’s decision allows this important case against Petrobras and other defendants to proceed apace, lifting the automatic stay imposed by the Second Circuit. As a result, we intend to ask Judge Rakoff to set a trial date as quickly as possible, to allow the defrauded class members to finally have their day in court.”

The complaint alleges that, throughout the Class Period, defendants made materially false and misleading statements regarding the company's business, operational and compliance policies. Specifically, defendants made false and/or misleading statements and/or failed to disclose that: (1) the company overstated its property, plant, and equipment on its balance sheet by overpricing contracts to certain companies relating to its refineries and operations and accepted kickbacks from construction companies approved for those contracts; (2) the company was receiving multi-billion dollar bribes from third-party contractors to secure contracts from Petrobras; (3) the company was in violation of its own Code of Ethics, as its employees and executives were routinely accepting bribes from certain construction companies; (4) the company's internal controls over financial reporting were ineffective and deficient; and (5) as a result of the foregoing, Petrobras' public statements were materially false and misleading at all relevant times.