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SUPREMES TAKE UP THREE BIG CASES

By H. Adam Prussin

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The Supreme Court has recently granted certiorari in three cases of great interest to the business world.

Class action waivers in employment agreements. One case, *Murphy Oil*, concerns the question of whether employees can be forced, as a condition of their employment, to sign agreements that prevent them from joining together to bring class actions in court against their employers. In this case, employees claim that they were forced to sign agreements containing arbitration provisions that prohibit them from pursuing class or collective actions, in violation of the National Labor Relations Act (the "NLRA"). In the wake of the Supreme Court's 2011 decision in *AT&T Mobility*, which upheld class action waivers in some consumer transactions, corporations have increasingly turned to this device to try to slam the courthouse door on people attempting to sue them. The availability of class actions is often the only economically feasible way for people with small claims, or small resources, to pursue their rights. Wells Fargo is also trying to enforce agreements precluding class actions brought by its own customers who claim that Wells Fargo opened accounts in their names without permission.

The class action waiver debate turns on the fact that these provisions are included in arbitration agreements. The Supreme Court likes to enforce arbitration agreements, which it considers to be an efficient, cost-effective alternative to full blown judicial proceedings. Arbitrations are typically not considered suitable for conducting class action procedures because these procedures undermine the efficiency and cost-effectiveness of arbitration. But wiping out the right to participate in class actions, just to promote the use of arbitration, would effectively deprive claimants of any effective remedy at all. That's because the alternative to judicial class actions is not a host of individual arbitrations, which could never be cost-effective for the claimants, but no claims being filed at all.

The NLRA says that "[e]mployees shall have the right to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." The Supreme Court has described these provisions as including employees' efforts "to improve terms and conditions of employment or otherwise improve their lot as employees through channels outside the immediate employee employer relationship," including "through resort to administrative and judicial forums." The National Labor Relations Board, which rules on these matters in the first instance, considers the "no class action" provisions to be illegal, in violation of the NLRA, because they interfere with efforts of employees to pursue their rights collectively. Because these provisions are illegal they are not enforceable under the Federal Arbitration Act, which governs the use of arbitration provisions.

In *AT&T Mobility,* the Supreme Court held that state laws providing that that class action waiver provisions are unenforceable because they are unconscionable (*i.e.* grossly unfair and one-sided) do not make the class action waiver provisions illegal. In *Murphy Oil,* the Fifth Circuit held that the NLRA does not "override" the FAA and that the "use of class action procedures . . . is not a substantive right."

Of Counsel, H. Adam Prussin

The two places where waiver provisions are most common are employment and consumer transactions. The Court's resolution of *Murphy Oil*, and its companion cases, will decide the fate of such provisions in one of its two most common applications.

Tolling Statutes of "Repose." Key provisions of the securities laws tend to have two different periods of limitations, within which actions must be brought or be time-barred. The first, and most familiar, is the statute of limitations, which typically expires a certain amount of time after the cause of action "accrues." Because accrual typically depends on whether plaintiffs knew or should have known about the facts constituting their claim, statutes of limitation tend to be elastic, with no readily knowable expiration date. To mitigate this uncertainty, the statute of repose tends to expire a certain amount of time after the transaction occurs that is the subject of the lawsuit. This provides potential defendants with a definitive date when they are "in the clear." For the antifraud provisions of the Securities Exchange Act, including Section 10(b), claims are barred two years

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after the plaintiff knew or should have known about the facts constituting the violation (statute of limitations) or five years after the violation itself (the statute of repose). Claims under Sections 11 or 12 of the Securities Act must be brought within the shorter of one year from the date of the violation (statute of limitations), or three years from the date the security was first offered to the public and in no event more than three years after the relevant sale (statute of repose).

What happens if, shortly after an alleged violation comes to light, an investor files a class action raising claims under the securities laws? Does every member of the class have to file his own case within the limitations/repose periods to prevent the statutory periods from running out on them? In A*merican Pipe*, the Supreme Court decided in 1974 that the filing of a class action "tolls" the statute of limitations for all class members; so that if, many years down the road, the court decides not to certify the class, or some class members are dissatisfied with a proposed settlement, members of that would-be class could still file their own actions.

But then, almost 40 years later, companies started wondering whether *American Pipe* tolling also stopped statutes of repose from running. And in 2013, in *Indymac*, the Second Circuit said that it didn't. Although the Supreme Court granted cert in that case, the parties settled before the Court could decide it. The issue has now come up again in a case brought by CalPERS under the Securities Act against ANZ Securities and other underwriters of mortgage-related securities issued by Lehman Brothers.

Lehman Brothers issued over $31 billion of debt securities between July 2007 and January 2008. CalPERS purchased millions of dollars of these securities. On June 18, 2008, another investor filed a securities class action lawsuit in the Southern District of New York against Lehman Brothers and certain of its directors and officers, alleging that the defendants had made material misrepresentations and omissions with respect to the debt offerings. In February 2011, more than three years after the debt offerings, CalPERS filed its own, separate complaint under the Securities Act, also challenging alleged misrepresentations and omissions in the offering documents. Later in 2011, the securities class action lawsuit settled, and CalPERS opted out of the settlement in order to pursue its own claims. CalPERS argued that its own individual claim would not be barred by the three-year statute of repose for its Securities Act claims because that three-year period was tolled during the pendency of class actions involving those securities.

The pros and cons of this question are all quite technical, but boil down to the question of whether the equitable tolling doctrine derives from the class action procedural rules, or, rather, is based on judicially created doctrines intended to promote fairness. Appellate courts have come down on both sides of this issue. Although the issue is technical, the consequences of a ruling, either way, will be seismic.

As noted in the *D&O Diary*, a prominent securities industry publication, without the benefit of *American Pipe* tolling with regard to the statute of repose, many investors, including institutional investors, will have to monitor the many cases in which their interests are involved more closely, and intervene or file individual actions earlier in order to preserve their interests. It its cert petition, CalPERS argued that in the circuits' holding that the prior filing of a securities class action lawsuit,

> potential securities plaintiffs are forced to guess whether they must file their own protective lawsuits to safeguard against the possibility that class certification in a pending action will be denied (or granted, then overruled on appeal) after the limitations period has run. If they guess wrong, genuine injuries and blatant frauds may go unaddressed. If they act conservatively, they will burden the courts with duplicative pleadings and redundant briefing that serve no real-world purpose.

By the time a class action reaches the settlement stage, and class members have to decide whether to opt out or not, there is a very good chance that the statute of repose has already expired. Without tolling, opting out of the settlement at that time will be self-defeating: it will be too late, by then, for individual class members who opt out to start their own lawsuit.

Statutes of Limitations Period for "Disgorgement" Claims. "Disgorgement" is a technical legal term that brings to mind regurgitation; and that is appropriate, because the term means that a wrongdoer must cough up the profits wrung from his or her wrongdoing. It is a favorite remedy often sought by the SEC and other government agencies. Given the long delays that have often occurred before agencies have brought cases related to the 2008 financial crash and other similar cataclysmic events, it is important to know how long these agencies have to bring these cases. Courts are often skeptical of claims that the statute doesn't start to run for years because government watchdog agencies did not know about the wrongdoing, or could not have discovered it earlier.

Notably, courts, including the Eleventh Circuit, have held that there is no statute of limitations for injunctive and other equitable relief. The law has, until now, been mixed as to whether disgorgement is a form of equitable relief immune from the five-year statute of limitations. In *Gabelli v. Securities and Exchange Commission*, the Supreme Court held, in 2013, that § 2462 and its five-year statute apply to enforcement actions seeking civil penalties, and they must be brought within five years from the date when the defendant's allegedly fraudulent conduct occurs, rather than when the fraud is discovered. In January, the Supreme Court granted certiorari in a case addressing a question left open by *Gabelli*: whether claims for disgorgement are subject to the same rule.

Under 28 U.S.C. § 2462, any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued." A case called *SEC v. Kokesh* has now raised the question of whether this five-year statute of limitations applies to claims for disgorgement or whether, instead, forfeiture is simply an equitable remedy to which no statute of limitations applies. The resolution of this issue will also have huge consequences for the SEC and other agencies seeking similar remedies in other cases.

Under 28 U.S.C. § 2462, the question is whether disgorgement is a form of penalty or forfeiture. The SEC had filed suit against Kokesh in 2009, accusing him of misappropriating money from four business development companies over a twelve-year period. The agency won a jury verdict against Kokesh in 2014, and the court ordered him to disgorge nearly $35 million, plus more than $18 million in prejudgment interest, and pay a $2.4 million penalty.

Kokesh appealed to the Tenth Circuit, arguing he shouldn't have been ordered to cough up money he was paid before 2004 because of the five-year statute of limitations. The Tenth Circuit rejected Kokesh's arguments in August 2016, holding that neither his disgorgement nor an injunction warning him not to violate securities laws were penalties, because neither remedy was a punishment. The Tenth Circuit sided with the D.C. Circuit and the First Circuit, which had also said the two types of recovery are different. But the decision conflicted with another from the Eleventh Circuit, which ruled in May that disgorgement is effectively the same as "forfeiture," which is specifically limited to five years. Barring a lengthy fight over Senate confirmation, it seems likely that the ninth seat on the Supreme Court, left vacant by the death of Justice Scalia, will be filled by the time this case is briefed and argued.

A DARK CLOUD'S SILVER LINING: THE FIRST CIRCUIT'S DECISION IN *ARIAD PHARMACEUTICALS*

By Louis C. Ludwig

On December 14, 2012, ARIAD Pharmaceuticals announced that the FDA had approved the marketing of ponatinib, a treatment for advanced-stage chronic myeloid leukemia ("CML"), a unique and especially deadly form of leukemia. Like many cancer-focused drug companies, ARIAD first secured approval for ponatinib to treat only the most gravely ill cancer patients. Ponatinib quickly became ARIAD's most important drug, the linchpin of its entire business. The FDA's action was not all good news, however, as it required ARIAD to include a "black box" warning on ponatinib's label disclosing the risk of possibly deadly side effects, most notably adverse cardiovascular events. Meanwhile, ARIAD conducted further studies to see if the drug was safe and effective enough to use with expanded classes of patients, including those who were not as seriously ill.

Despite the black box warning, ARIAD nevertheless continued to publicly project confidence in ponatinib's future. But before too long, more troubling news came out. First, on October 9, 2013, ARIAD informed investors that it was pausing enrollment in all clinical studies of ponatinib due to increased instances of medical complications. Days later, ARIAD disclosed that it had agreed to halt an international, open-label trial of ponatinib trial entirely. Finally, on October 31, ARIAD announced that it was "temporarily suspending the marketing and commercial distribution" of ponatinib at the direction of the FDA. The market reacted harshly, and ARIAD's stock price fell all the way to $2.20 per share.


Attorney Louis C. Ludwig

A shareholder class action lawsuit was not far behind. Even for the tiny group of patients who had been allowed to receive the drug, those who were the most desperately ill, ponatinib was something of a mixed blessing. Ponatinib is targeted at relatively few CML patients because the drug is not safe enough for a broader swath of CML patients. ARIAD has used these restrictions to push through price hikes on a regular basis. By early 2015, ponatinib's monthly gross price was $11,280. As of October 2016, it had increased to $16,561 for a month's supply, prompting a public rebuke from Senator Bernie Sanders.

As in all securities fraud class actions, ARIAD moved to dismiss the case. The district court granted the motion, but on November 28, the First Circuit held that one of plaintiffs' alleged misrepresentations did raise a compelling inference that ARIAD's executives acted with scienter, or intent to defraud. That statement occurred at a breakfast meeting with securities analysts, where ARIAD executives allegedly said that the company expected the drug to be approved by the FDA with a "favorable label." That statement was then included in an investment bank's report that was disseminated to the market the following day. The truth, however, was that the FDA had already informed the company that it was rejecting Ariad's proposed label and requiring additional safety disclosures.

The misstatement that the appellate court held to be actionable is significant because it related to defendants' representations to investors that failed to disclose critical communications with the FDA. That statement was deemed both material and strongly supported an inference of scienter. The court held that ARIAD's upbeat comments at the meeting amounted to an "expression of . . . hope without disclosure of recent troubling developments [that] created an impermissible risk of misleading investors" and was therefore knowingly or recklessly misleading. This claim will move forward in the district court.

This is notable because the First Circuit has ratcheted up the already-stringent pleading standards in securities class actions for both materiality and scienter. Its 2015 decision in *Fire and Police Pension Ass'n v. Abiomed, Inc.* held that doubts about the materiality – or significance to investors – of a statement can prove fatal to a plaintiff's scienter allegations.

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In *In re: ARIAD Pharmaceuticals Inc. Securities Litigation*, an appellate panel that included retired Supreme Court Justice David H. Souter recognized that misleading statements that omit information about communications with the FDA can support a finding of scienter. Such communications are frequently at the heart of securities class actions involving pharmaceutical companies.

ARIAD Pharmaceuticals is in line with long-standing circuit precedent that statements published in light of a defendant's knowledge of contrary facts provide classic evidence of scienter. What is new is that the Court of Appeals has joined lower courts within the First Circuit in explicitly extending this principle to the realm of FDA communications so often kept secret until the truth is revealed to investors. Therefore, despite largely affirming the lower court, *ARIAD Pharmaceuticals* will nonetheless help plaintiffs who allege misrepresentations of FDA communications meet the tough pleading standard set by the First Circuit in *Abiomed.*

IT'S NOT OK TO LEAK INSIDE INFORMATION TO YOUR "TRADING RELATIVE OR FRIEND"

By Jennifer Banner Sobers

Attorney Jennifer Banner Sobers

The past two years have seen a series of significant decisions on insider trading criminal liability, which all came to a head last month when the Supreme Court handed down its decision in *Salman v. United States*. The Court affirmed the conviction of a person who traded on inside information that he had received from a friend who was also a relative-by-marriage. It held that the recipient of inside information (the "tippee") could be convicted even if the person who disclosed it (the "tipper") did not receive any tangible financial benefit in exchange for tipping the information – a tipper is liable if s/he personally benefits by gifting confidential information to a trading relative or friend.

The issue started to percolate two years ago when, as we reported at the time, the Second Circuit issued a controversial decision in *U.S. v. Newman*. There, the court overturned the insider trading convictions of tippees who were several layers removed from the original tipper. The Second Circuit held, among other things, that in order to convict, the government had to provide evidence of a tangible quid pro quo between tipper and tippee. The court's reasoning seemed to run afoul of the Supreme Court's insider trading decision decided decades earlier, *Dirks v. SEC*, which held that tippee liability hinges on whether the tipper's disclosure breaches a fiduciary duty, which occurs when the tipper discloses the information for a personal benefit. Further, the personal benefit may be inferred not only where the tipper receives something of value in exchange for the tip, but also if s/he *makes a gift of confidential information* to a trading relative or friend. The Second Circuit, by contrast, held that the government could not prove the receipt of a personal benefit by the mere fact of such intangible things as a friendship, or that individuals were alumni of the same school or attended the same church. The Supreme Court declined to review the *Newman* decision.

Less than a year later, the Ninth Circuit weighed in with its decision in *U.S. v. Salman*, in which it held that the "personal benefit" requirement did not always require that the tipper receive a financial quid pro quo. The court reasoned that the case was governed by *Dirks's* holding that a tipper benefits personally by making a gift of confidential information to a trading relative or friend. With the split among the Circuits in place, this time the Supreme Court took up an appeal to settle the Circuit split on the "narrow issue" of whether the government must prove that a tipper received a monetary or financial benefit or whether gifting inside information to a trading relative or friend is enough to establish liability.

The Supreme Court upheld the Ninth Circuit's analysis. Last month, SCOTUS found that *Dirks* "easily resolves" the narrow issue presented. It reasoned that under *Dirks*, when an insider makes a gift of confidential information to a trading relative or friend, the tip and trade resemble trading by the insider himself followed by a gift of the profits to the recipient. In these situations, the tipper personally benefits because giving a gift of trading information to a trading relative is the same thing as trading by the tipper followed by a gift of the proceeds – the tipper benefits either way. The Court consequently reasoned that by disclosing information as a gift to his brother with the expectation that he would trade on it, the former Citibank investment banker breached his duty of trust and confidence to Citigroup and its clients – a duty acquired and breached by Salman when he traded on the information with full knowledge that it had been improperly disclosed. Thus, SCOTUS decided that the Ninth Circuit properly applied *Dirks* to affirm Salman's conviction.

This decision is in line with the direction most Justices seemed to be heading during oral argument, about which we most recently reported. At that time, SCOTUS seemed reluctant to side with Salman to find that a tipper does not personally benefit unless the tipper's goal in disclosing information is to obtain money, property, or something of tangible value, which SCOTUS signaled during the argument would conflict with *Dirks*. Ultimately, the Court made clear in its decision that traders can be liable even if the insider does not receive a financial benefit for passing the tip as long as the insider makes a gift to a trading friend or relative.

In this decision, SCOTUS significantly noted that to the extent the Second Circuit in *Newman* held that the tipper must also receive something of a pecuniary or similarly valuable nature in exchange for a gift to a trading relative, that rule is inconsistent with *Dirks*. It is hard to believe that anyone could be more pleased about that pronouncement than Preet Bharara, United States Attorney for the Southern District of New York. Since the *Newman* decision, Bharara's office has dropped at least a dozen cases against alleged inside traders, including ones who had already pled guilty, largely because of the Second Circuit's analysis. The day SCOTUS handed down its decision, Bharara issued a press release in which he said "the Court stood up for common sense" and that the "decision is a victory for fair markets and those who believe that the system should not be rigged."

However, the Supreme Court declined to take its decision to the other extreme that the government proffered – that a gift of confidential information to anyone, not just a trading relative or friend, is enough to prove securities fraud because a tipper personally benefits through any disclosure of confidential trading information for a personal purpose. Indeed, SCOTUS did not venture any further than the contours of this case – the "gift of confidential information to a trading relative" – that *Dirks* envisioned. SCOTUS reaffirmed its statement in *Dirks* that "determining whether an insider personally benefits from a particular disclosure, a question of fact, will not always be easy for courts." The Court seemed relieved that it did not have to "address those difficult cases" in deciding this case.

So what does this all mean? Well, in the wake of this decision, we will probably see a ramp up of insider trading prosecutions by Bharara's office and other prosecutors in 2017 against people who passed insider tips to their relatives and friends.

However, the *Salman* decision did not address the other reasons the Second Circuit reversed the *Newman* defendants' convictions, and in many instances, those additional obstacles could prove daunting. The Second Circuit held that the government had to prove not only that the tipper received a personal benefit, but also that defendants knew the information they traded on came from insiders and that the insiders received a personal benefit in exchange for the tips. These issues provide a significant bar for the government to overcome with respect to proving remote tippee liability, where the original tip is passed around from the original tippee to his or her colleagues, and those further down the information chain may know nothing about where the information came from, much less whether the tipper benefited from leaking the information. This is exactly what happened in *Newma*n as Bharara's office had become renowned for pursuing pre-*Newman*. Moreover, courts gained no learning from SCOTUS as to where to draw the line regarding how close a friend must be or how far removed a relative can be to trigger insider trading liability. Indeed, the court consistently referenced the precise wording in the *Dirks* decision, "trading relative," presumably to avoid elaborating on what that actually means. Given the dearth of Supreme Court insider trading cases, courts may continue to struggle with these issues for years to come.

"SCHEME LIABILITY": WHEN CAN INVESTORS SUE BAD BUT SILENT ACTORS FOR SECURITIES FRAUD?

By Michele S. Carino

In Pomerantz's precedent-setting *Stoneridge* case, the Supreme Court recognized that securities fraud can be committed by people who themselves make no public statements, but who nonetheless deploy a "device, scheme, or artifice to defraud" or engage in "any act, practice, or course of conduct" that defrauds a person in connection with the purchase or sale of a security – so-called "scheme liability." Because deceptive conduct often accompanies or facilitates false statements, it has been difficult to discern what type of conduct, by itself, can satisfy this "scheme liability" standard. In other words, what is actionable fraudulent or deceptive conduct?

Of Counsel, Michele S. Carino

On December 28, 2016, in a case called *Medtronic*, the Eighth Circuit addressed that question. *Medtronic* involved claims that the company, its officers and senior managers and certain doctors had engaged in a scheme to defraud investors by concealing information related to Medtronic's product, INFUSE, which was developed as an alternative to bone grafting procedures in spinal surgery. In particular, plaintiffs alleged that Medtronic violated the securities laws, because not only did it fail to disclose financial ties between the company and doctors who conducted the clinical trials for INFUSE, but it also paid doctors to conceal adverse events, employ weaker safety rules for clinical trials, and publish favorable articles promoting the product. Medtronic sought dismissal of the scheme liability claims, arguing that it could not be held liable for the false or misleading statements made by doctors concerning INFUSE, because it was not the "maker" of those statements. The district court agreed, and dismissed the case.

The Eighth Circuit reversed. In the first instance, it distinguished between scheme liability claims, which may be brought by private investors, and "aiding and abetting" claims, which cannot. The court explained that aiding and abetting refers to situations where "entities … contribute 'substantial assistance' to the making of a [false] statement but do not actually make it." For instance, if a supplier engaged in sham transactions with a company so that the company could boost its revenues and misstate its financials, the supplier cannot be held directly liable for the false statements made by the company. In contrast, scheme liability imposes primary liability "based on conduct beyond misrepresentations or omissions." Thus, the actor has to actually do something besides knowing that a statement is false. As a result, the Eighth Circuit cautioned that "a plaintiff cannot support a scheme liability claim by simply repackaging a fraudulent misrepresentation as a scheme to defraud."

In *Medtronic*, the court found that "the act of paying physicians to induce their complicity is the allegation at the heart of the scheme liability claim." This deceptive conduct was separate and apart from the misrepresentations themselves, and thus, not merely a "repackaging" of allegations to create a scheme.

The Eighth Circuit also reaffirmed that to state a claim based on a deceptive scheme, a plaintiff must allege that the market relied on the fraudulent conduct. Following the Supreme Court's decision in *Stoneridge*, the court explained that this "causal connection" between the defendant's deception and the plaintiffs' injury was necessary to limit liability to conduct that affected the price of the company's stock and therefore caused the plaintiff's loss. Otherwise, scheme liability could be extended to all aiders and abettors whose conduct may have facilitated the fraud, but which did not reach the public. In *Stoneridge*, the Supreme Court held that the scheme liability claim failed, because investors could not demonstrate that they relied on defendants' conduct, and thus, the necessary "causal link" was missing. But in *Medtronic*, the court found that Medtronic's manipulation of clinical trials and concealment of adverse results directly caused the production of false information on which the market relied. Indeed, the company utilized the fraudulent scheme as a mechanism to convince investors of the company's competitiveness and sustainability. Because reliance was established, the court upheld the scheme liability claim.

Although potential defendants may characterize the Eighth Circuit's decision as a "back-door" to circumvent the restrictions on bringing claims against aiders and abettors, it is no such thing. Rather, the Eighth Circuit carefully defined the requirements for bringing a scheme liability claim consistent with the language of the securities laws, as well as the recognition by numerous courts that "conduct itself can be deceptive." The Eighth Circuit's decision highlights an important mechanism for investor recovery, because actors can and should be held accountable for their actions, as well as their words, particularly when markets are affected.

SAVE THE DATE

July 11 & 12, 2017

Pomerantz's Annual Conference: Corporate Governance & Securities Litigation Round Table Event

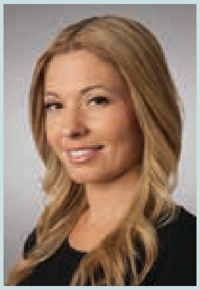
Join some of the largest institutional investors from around the globe for lively, thought-provoking discussion and industry updates.

The Atlantis Resort
Paradise Island, Bahamas

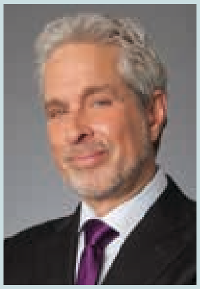
For more information or to register interest, please email us:

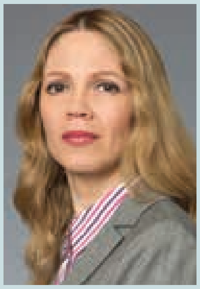
PomerantzRoundTable2017@pomlaw.com

NOTABLE DATES ON THE POMERANTZ HORIZON


Jennifer Pafiti


Jeremy A. Lieberman


Marc I. Gross


Emma Gilmore


Gustavo F. Bruckner

On February 27, **MARC GROSS** will attend the **CII Executive Compensation 201 Course** in Washington, DC.

JEREMY LIEBERMAN, EMMA GILMORE and **GUSTAVO BRUCKNER** will attend the **CII Winter Conference 2017** in Washington, DC from February 27 to March 1. On March 1 and 2, **Jeremy** will attend the **ICGN** Washington, DC event. On March 4 and 5, He and **JENNIFER PAFITI** will participate in the **CALAPRS General Assembly** in Monterey. Then, on March 14 to 16, **JEREMY** and **JENNIFER** will attend the **CWAG 2017 Chair's Initiative** and **Western Pacific AG Summit** in Honolulu, Hawaii. On March 28, **JEREMY** will give a lecture on **U.S. Securities Litigation** at the **Bar Ilan University Faculty of Law** in Ramat Gan, Israel. On March 30, **JENNIFER** will speak on a panel entitled **"Opportunities, Challenges & Trends in Private Equity"** at the **NASP Seventh Annual Conference Day of Education in Private Equity for Trustees and Staff,** in Los Angeles

POMTRACK© CLASS ACTIONS UPDATE

Pomerantz, through its proprietary PomTrack© system, monitors client portfolios to identify potential claims for securities fraud, and to identify and evaluate clients' potential participation in class action settlements.

NEW CASES:

Recently filed securities class action cases filed by various law firms are listed below.
If you believe your fund is affected by any of these cases, contact Pomerantz for a consultation

CASE NAME	TICKER	CLASS PERIOD	LEAD PLAINTIFF DEADLINE
Zimmer Biomet Holdings	ZMH	September 7, 2016 to October 31, 2016	January 31, 2017
Monaker Group, Inc. (f/k/a Next 1 Interactive, Inc.)	MKGI MXEX NXO1	April 6, 2012 to June 23, 2016	February 7, 2017
Rio Tinto plc	RIO	March 16, 2012 to November 14, 2016	February 10, 2017
New Oriental Education & Technology Group	EDU	September 27, 2016 to December 1, 2016	February 13, 2017
Abeona Therapeutics, Inc. (f/k/a Plasmatech Biopharmaceuticals)	ABEO	to February 14, 2017	
Dakota Plains Holdings	DAKP	March 23, 2012 to August 15, 2016	February 14, 2017
Illumina, Inc.	ILMN	July 26, 2016 to October 10, 2016	February 14, 2017
Rent-A-Center, Inc.	RCI	July 27, 2015 to October 10, 2016	February 21, 2017
Universal Health Services	UHS	February 26, 2015 to December 7, 2016	February 21, 2017
PayPal Holdings, Inc.	PYPL	to February 27, 2017	
Endologix, Inc.	ELGX	August 2, 2016 to November 16, 2016	March 6, 2017
General Cable Corp.	BCG	February 23, 2012 to February 10, 2016	March 6, 2017
Agile Therapeutics, Inc.	AGRX	March 9, 2016 to January 3, 2017	March 7, 2017
Inotek Pharmaceuticals	ITEK	July 23, 2015 to December 30, 2016	March 7, 2017
TG Therapeutics, Inc.	TGTX	September 15, 2014 to October 12, 2016	March 7, 2017
Fenix Parts, Inc.	FENX	May 14, 2015 to October 12, 2016	March 13, 2017
Novo Nordisk A/S	NVO	February 5, 2015 to October 27, 2016	March 13, 2017
Ophthotech Corp.	OPHT	May 11, 2015 to December 12, 2016	March 13, 2017
Seattle Genetics, Inc.	SGEN	October 27, 2016 to December 23, 2016	March 13, 2017
Dollar General Corp.	DG	March 10, 2016 to November 30, 2016	March 20, 2017
Fiat Chrysler Automobiles	N/A	October 13, 2014 to January 11, 2017	March 20, 2017
OneMain Holdings, Inc.	LEAF OMF	March 3, 2015 to November 7, 2016	March 20, 2017
Qualcomm, Inc.	QCOM	February 1, 2012 to January 17, 2017	March 24, 2017
The Southern Company	SO	April 25, 2012 to October 29, 2013	March 24, 2017
Banc of California, Inc.	BANC	October 29, 2015 to January 20, 2017	March 27, 2017
Mallinckrodt plc	MNK	November 25, 2014 to January 18, 2017	March 27, 2017
Yahoo! Inc.	YHOO	November 12, 2013 to December 14, 2016	March 27, 2017

SETTLEMENTS:

The following class action settlements were recently announced.
If you purchased securities during the listed class period, you may be eligible to participate in the recovery.

CASE NAME	AMOUNT	CLASS PERIOD	CLAIM FILING DEADLINE
Pfizer, Inc. (2004)	$486,000,000	October 31, 2000 to October 19, 2005	January 28, 2017
Pacific Coast Oil Trust	$7,600,000	May 2, 2012 to July 1, 2014	February 2, 2017
A10 Networks, Inc.	$9,837,500	March 21, 2014 to January 29, 2015	February 10, 2017
Advanced Emissions Solutions, Inc.	$3,950,000	May 12, 2011 to January 29, 2015	February 10, 2017
Digital Domain Media Group, Inc.	$5,500,000	November 18, 2011 to September 6, 2012	February 13, 2017
Sino-Forest Corporation (Canada) (Horsley) CAD	$4,200,000	March 19, 2007 to June 2, 2011	February 14, 2017
Sino-Forest Corporation (Canada) (BDO Limited) CAD	$8,774,349	March 19, 2007 to June 2, 2011	February 14, 2017
Sino-Forest Corporation (Canada) (Underwriters) CAD	$32,500,000	March 19, 2007 to June 2, 2011	February 14, 2017
Tibet Pharmaceuticals, Inc.	$2,075,000	January 24, 2011 to April 3, 2012	February 27, 2017
China Finance Online Co. Limited	$3,000,000	April 29, 2013 to June 3, 2015	March 3, 2017
China North East Petroleum Holdings Limited	$925,000	September 3, 2010 to March 14, 2012	March 6, 2017
Hampden Bancorp, Inc.	$1,800,000	November 4, 2014 to April 17, 2015	March 11, 2017
Physicians Formula Holdings, Inc.	$5,600,000	August 15, 2012 to December 13, 2012	March 13, 2017
Universal Travel Group, Inc.	$4,075,000	March 12, 2009 to April 11, 2011	March 18, 2017
Barrett Business Services, Inc.	$12,000,000	February 12, 2013 to March 9, 2016	March 21, 2017
Cornerstone Therapeutics Inc.	$17,881,555	September 15, 2013 to February 3, 2014	March 27, 2017
Fifth Street Asset Management Inc.	$9,250,000	October 30, 2014 related to IPO	March 27, 2017
Fifth Street Finance Corp.	$14,050,000	July 7, 2014 to February 6, 2015	March 27, 2017
AgFeed Industries, Inc.(SEC)	$5,500,000	March 14, 2008 to December 19, 2011	March 31, 2017
BP p.l.c. (Consolidated Action)	$175,000,000	April 26, 2010 to May 28, 2010	April 1, 2017
MetLife, Inc. (2012)	$9,750,000	March 3, 2011 to July 5, 2012	April 6, 2017
CVB Financial Corp.	$6,200,000	March 4, 2010 to August 9, 2010	April 18, 2017
Marion Bass Securities Corporation (Wells Fargo Bank)	$7,825,000	February 1, 1996 to December 11, 1998	April 21, 2017
Quiksilver, Inc.	$1,500,000	June 6, 2014 to March 26, 2015	May 10, 2017
EZCORP, Inc.	$5,900,000	April 19, 2012 to October 6, 2014	May 19, 2017
Elan Corporation, plc	$135,000,000	August 23, 2006 to July 29, 2008	May 29, 2017

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