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Supreme Court Has a Full Plate of Securities Cases

by H. Adam Prussin

Inside This Issue

Halliburton. In our last issue, we devoted much space to discussion of *Halliburton*, which presents the issue of whether the "fraud on the market" theory, which underpins much of securities class action practice, is still the law of the land. As we said, since the Court's decision in *Basic v. Levinson* about 25 years ago, securities class action plaintiffs have relied on this theory to obtain class certification. The theory helps investors establish the essential element of reliance on a class wide basis. It presumes that all investors rely on the market price of a security as reflecting all available material information about the security, including defendants' alleged misrepresentations. By agreeing to reconsider this question, the Court threw the securities bar, on both sides, into a frenzy.

On March 5, the Supremes held oral argument in *Halliburton*, and most observers thought that the Justices seemed unwilling to throw out *Basic* altogether. Instead, it seems likely that they intend to tweak it a bit, by allowing defendants to rebut the fraud on the market presumption at the class certification stage, with evidence that the false or misleading statements issued by the company did not actually distort the market price of its stock. If this prediction is accurate, investors will be able to live with the new *Halliburton* rule, and corporations will have to.

Indymac. Another venerable Supreme Court precedent in the class certification arena is *American Pipe*, a 1974 decision concerning the statute of limitations. In that case, plaintiffs filed a class action, but after the statute of limitations had expired the court refused to certify the class, and various would-be class members then tried to file individual claims. The Court held that for those people the statute of limitations was "tolled" – stopped running– while the class certification motion was still pending. That ruling made it unnecessary for potential plaintiffs to start filing individual lawsuits to protect themselves while the class certification motion was still undecided. Under *American Pipe*, only if class certification is denied would individual actions be necessary in order to protect a plaintiff's rights from expiring.

American Pipe talks about limitations periods which start to run when plaintiffs knew, or should have discovered, facts establishing their claim. The new case, *Indymac*, involves a so-called statute of repose, which in this case says that, under §11 of the Securities Act, the action must be brought within three years after the initial public offering that is the subject of the action, regardless of when investors knew or should have known of their claim.

Class certification motions are usually not decided within three years, so the same problem that caused the Court to create the *American Pipe* tolling rule would arise with statutes of repose: as the three year limitation approaches, if the class certification motion is still not decided, individual investors would have no choice but to file individual actions in order to protect themselves from expiration of the "repose" period. A multitude of separate, duplicative lawsuits is not something investors or the courts want to see.

All appeals courts that have considered the question until last summer had concluded that the three year statute of repose for §11 is tolled

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by the pendency of a class action motion; but then, in *Indymac*, the Second Circuit disagreed, setting up this Supreme Court appeal.

FifthThird Bancorp. This case, to be argued in April, concerns the duties of fiduciaries of employee benefit plans governed by ERISA. Many of those plans invest participants' contributions in stock of the employer corporation, or provide employer stock as an investment option. If the corporation then makes a "corrective" disclosure of negative information, plan participants who invested in company stock can suffer big losses. Sometimes they bring class actions against plan fiduciaries for ignoring warning signs that something was amiss.

The issue the Court will consider in *Fifth Third Bancorp* is what plaintiffs in these cases must plead in order to survive a motion to dismiss. ERISA imposes on plan fiduciaries the obligation to act prudently and reasonably. Under one line of cases, plaintiffs must plead facts sufficient to rebut a presumption that the fiduciaries acted reasonably. In cases involving allegedly imprudent investments in company stock, the facts alleged have to show that the company was in dire straits for that presumption to be rebutted.

In *Fifth Third Bancorp*, however, the Sixth Circuit held that this presumption of prudence does not apply at the motion to dismiss stage, but only later, when there is a fully developed evidentiary record. According to the Sixth Circuit, a plaintiff need only allege that "a prudent fiduciary acting under similar circumstances would have made a different decision".

Class actions against plan fiduciaries are a regular accompaniment to securities fraud litigations. Whatever the Court holds will have a major impact in the industry.

Supreme Court Upholds Claims Arising From Stanford Ponzi Scheme

In a 7-2 decision issued on February 26, 2014, the United States Supreme Court resolved a circuit split over the application of the Federal Securities Uniform Standards Act of 1998 ("SLUSA"). This act bars class actions alleging state law claims of common law fraud "in connection with" the sale of a SLUSA-defined "covered security". The decision clears the way for investors to seek recovery under state law from the law firms of Proskauer Rose and Chadbourne and Parke, and other secondary actors, of just under $5 billion they paid for certificates of deposit administered by Stanford International Bank Ltd. The decision marked a win for the plaintiffs' bar.

The plaintiffs alleged that convicted swindler Allen Stanford ran a multibillion dollar Ponzi scheme, selling investors bogus certificates of deposit issued by the bank. These certificates are not "covered securities" as defined by SLUSA. However, the proceeds of the offer were supposed to be invested in "covered securities" that were conservative investments. Stanford never bought the covered securities. Instead he used the investors' money to repay old investors, maintain a lavish lifestyle, and to finance highly-speculative real estate ventures.

The Court defined the crux of the claim as "whether SLUSA applies to a class action in which the plaintiffs allege (1) that they 'purchase[d]' uncovered securities (certificates of deposit that are not traded on any national exchange), but (2) that the defendants falsely told the victims that the uncovered securities were backed by covered securities."

The key phrase in SLUSA, according to the majority opinion, was its prohibition of state law class actions arising "in connection with" the purchase of a covered security. The majority interpreted that phrase narrowly, holding that an actual sale of a covered security has to occur for SLUSA to apply, and not just a promised sale. The majority observed that a broader interpretation would directly conflict with matters primarily of state concern The fact that the certificates were allegedly backed by covered securities was an insufficient connection to covered securities to bring the case within SLUSA's reach.

In a dissention opinion, Justices Anthony Kennedy and Samuel Alito warned that the majority's ruling could hamper SEC's enforcement efforts, because Section 10(b) of the Securities Exchange Act, under which the SEC brings enforcement actions, also uses the phrase "in connection with the purchase or sale of any security." The majority found that concern unfounded, however, saying the SEC failed to identify any enforcement action filed in the past 80 years that would be foreclosed by the ruling.

Indeed, the SEC had already successfully sued Stanford and his accomplices over the certificates of deposit. "The only difference between our approach and that of the dissent," Justice Breyer added, "is that we also preserve the ability for investors to obtain relief under state laws when the fraud bears so remote a connection to the national securities market that no person actually believed he was taking an ownership position in that market."

Securities law experts are backing the majority's limited ruling. "The opinion is imminently correct as a matter of common sense and legal policy," said Donald Langevoort, a professor of law at Georgetown University. Langevoort said he was "very surprised" the SEC tried to argue that a ruling for the plaintiffs may curtail the government's enforcement powers.

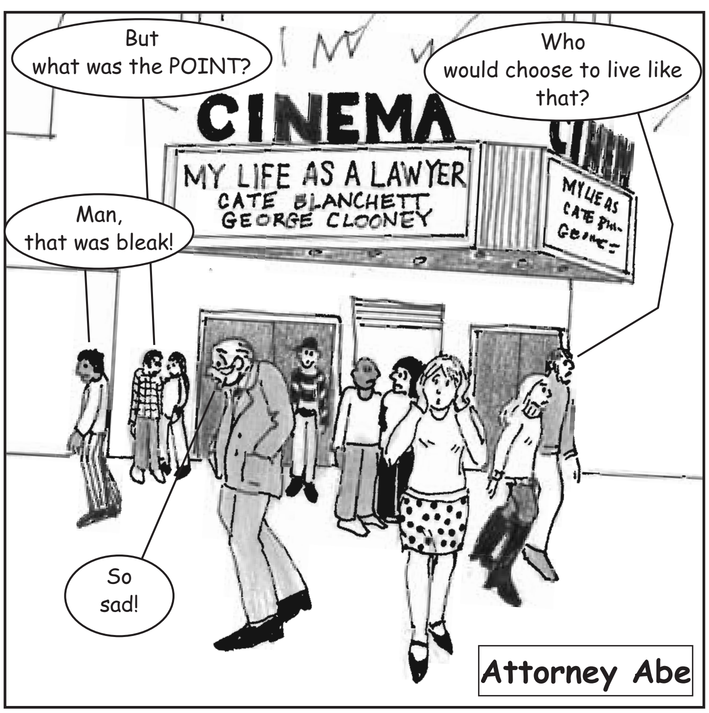
Emma Gilmore

When Corporate Internal Investigations Become Part of the Problem

When a company uncovers evidence of accounting improprieties or executive misconduct, or when the government does it for them, a common step is for the company to conduct an "independent" internal investigation. The American Institute of Certified Public Accountants has gone so far as to say that an audit committee *must* initiate an internal investigation when fraud is detected. A proper investigation, followed by a candid report of findings to investors, can play a critical role in rebuilding investor confidence.

However, all too frequently internal investigations are used to hide the truth and protect those responsible. For example, the Office of the Comptroller of Currency (OCC) recently charged that a JP Morgan internal investigation into the bank's handling of Madoff funds was designed to conceal the knowledge of key witnesses. After spending time with JP Morgan's lawyers, the government said that the witnesses demonstrated "a pattern of forgetfulness."

Even worse, because the investigation had been conducted by lawyers, JP Morgan claimed that the details of the investigation were protected by attorney-client privilege. On that basis, JP Morgan refused to produce the notes from interviews of 90 bank employees following Madoff's arrest. OCC lawyers argued that the privilege did not apply because it was being used to perpetuate a fraud. However, the argument failed because the OCC could not establish what the newly-forgetful witnesses told their lawyers, or what the lawyers told them to say to investigators.



In December, 2013, the OCC dropped its attempt to discover details regarding JP Morgan's internal investigation. A month later, JP Morgan agreed to pay a civil penalty of $350 million to the OCC. The deal represented the largest fine ever paid to the OCC, but it also ensured that the facts surrounding the internal investigation would forever remain private.

Where the investigators' report cannot be manipulated from the outset, companies sometimes contrive to conceal the results. In the *AgFeed Industries, Inc.* securities litigation, for example, Pomerantz uncovered evidence of an attempt to bury the findings of an internal investigation. In that case, the chairman of the committee investigating rampant fraud at the company testified that investigative committee lawyers and other committee members refused to produce a report to investors because the lawyers – who also represented management at the time – believed that the findings would expose management to litigation. As a result, the full breadth of the fraud was concealed for years.

In a recent editorial in the *Financial Times*, short seller Carson Block questioned why these independent investigations so routinely failed to identify even blatant cases of fraud: "Time and again, investigators report that they have found no evidence to support claims of wrongdoing. The question that investors need to ask themselves is: how hard did these investigators look for clues that might have revealed something was amiss?" On his website, Block named names. Concentrating on U.S.-listed Chinese firms, Block identified seven independent investigations that purported to clear management despite obvious signs of fraud that caused investors to lose most of their investment: China Agritech, ChinaCast Education, China Integrated Energy, China Medical Technologies, Duoyuan Global Water, Sino Clean Energy, and Silvercorp.

The OCC's charges in the JP Morgan case and the list of improper independent investigations published by Carson Block both confirm a disturbing trend. One possible reason for the trend: outside law firms, which often turn internal investigations into a lucrative practice area. Shielding management is the safe play for the investigating law firms. If they candidly exposed wrongdoing to investors, what company is going to hire them the next time around?

Joshua B. Silverman

Appraisal is the New Black

For decades, appraisal has been viewed as an antiquated, seldom-used procedure that "dissenting" shareholders can use if they believe that their company is being sold for an inadequate price. Instead of accepting the merger price, dissenters can ask a court to determine the "fair value" of their shares. But they rarely do.

Until now. As highlighted in a recent *New York Times Dealbook* article,the "new, new thing on Wall Street is appraisal rights," particularly in the hands of hedge fund investors who can easily afford the costs.

The Dell management buyout may have been the start of this trend. There were months of wrangling between the buyout group and a "special committee" of disinterested directors, who were unable to scare up any legitimate competing offers from any third parties, despite intensive efforts to shop the company and lots of noise from Carl Icahn. Then,the deal finally went through, at a total cost of $24.9 billion. About 2.7 percent of shareholders exercised appraisal rights, including institutional investor T. Rowe Price.

A much bigger percentage of dissenters appeared in the wake of the Dole Food management buyout of last fall. According to Dealbook, most investors were underwhelmed by the merger price, and in the end, only 50.9 percent of the shares voted to approve the merger.

Four hedge funds reportedly bought about 14 million shares when the buyout proposal was first announced, and they have now exercised their appraisal rights. In all, about 25 percent of Dole's public shareholders have sought appraisal -- an astonishing number.

These four dissenting hedge funds have engaged in this same tactic several times in the past, and a nascent cottage industry in appraisal rights is developing. As discussed in the following article, this has led to significant changes in Delaware law and practice, to help acquirers back away from a merger agreement if too many shareholders choose to dissent. Acquirers are going to think twice if they can't predict how much they are actually going to have to pay to buy a company.

The threat of appraisal actions is probably a good thing, especially in the context of management buyouts, where the odds are heavily stacked against the public shareholders. It is useful for these insiders to know that, if they try to cut too good a deal for themselves, savvy financial institutions can take them to the cleaners in appraisal proceedings.

H. Adam Prussin

Rise in "Dissenting Shareholder" Merger Conditions

The increasing frequency of appraisal proceedings has led directly to a significant change in Delaware law and practice, most notably to the increasing use of dissenting-shareholder conditions in merger agreements. These provisions allow an acquirer to back away from the merger if holders of more than a specified percentage of outstanding shares exercise their appraisal rights. Without this condition, the acquirer would have to go through with the merger even if there are a large number of dissenting shares, thereby running the risk of having to pay a lot more than what it had bargained for.

In Delaware, valuation of the target company's stock in an appraisal proceeding requires a court to "determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger" but taking into account "all relevant factors."

Historically, the appraisal remedy has been pursued infrequently because the appraisal process is complex and potentially risky for the dissenting shareholder. Shareholders seeking appraisal must be prepared to invest considerable time and expense in pursuing their rights. Even when the process goes quickly, dissenters face the risk that the court will undervalue the company and their shares. Dissenters must initially bear all their litigation expenses and do not receive payment until finally ordered by the court, and then only receive reimbursement depending on the number of other dissenters, each of whom must pay his or her share of the costs. Absent a group of dissenters who can share costs and (most importantly) legal and expert witness fees, the cost of an appraisal is prohibitively expensive except for holders with large stakes.

Despite these obstacles, the appraisal remedy is becoming more and more popular, at least in Delaware. One reason is that appraisal valuations have exceeded the merger price in approximately 85% of cases litigated to decision. Another is that even if the court's valuation is lower than the merger price, dissenters can still come out ahead because these awards include interest at a rate of 5% above the Federal Reserve discount rate. According to recent academic studies, last year the value of appraisal claims was $1.5 billion, a ten-fold increase in the past ten years; and more than 15 percent of takeovers in 2003 led to appraisal actions by dissenters.Recent changes to Delaware law encourage the appraisal remedy by allowing shareholders to exercise their appraisal rights even prior to the consummation of the merger, at the conclusion of the first step in the transaction.

Mergers often are completed in two steps. In step one, the ac-

Pomerantz is Pleased to Announce that Michael J. Wernke and Michele S. Carino have joined our securities litigation team as Of Counsel in our New York office.

For the previous nine years, Mr. Wernke was a litigator with a major defense firm, with his primary focus in the securities defense arena. He brings to Pomerantz a unique perspective, with his extensive, successful experience in defending large, multinational financial institutions in securities fraud and commercial litigations.

Mr. Wernke received his J.D. from Harvard Law School in 2004. He also holds a B.S. in Mathematics and a B.A. in Political Science from The Ohio State University, where he graduated summa cum laude.

Before joining Pomerantz, Ms. Carino honed her skills as a securities and corporate governance attorney at major law firms, serving clients on both the defense and plaintiff side of class actions, shareholder derivative actions, and other investor protection cases.

Ms. Carino received her bachelor of arts in Economics from Binghamton University with Phi Beta Kappa honors in 1992 and graduated magna cum laude from Georgetown University Law Center in 1999. She has taught a legal research and writing seminar at Columbia University Law School, and has served as a Mentor and Coach to Legal Outreach, a constitutional law and college preparatory program for New York City public high school students.

quirer launches a tender or exchange offer for any and all outstanding shares. Upon the close of that transaction, the acquirer then scoops up any shares not tendered in the offer by way of a second-step merger.

A "short-form" merger does not require stockholder approval of the second-step merger, but can be used only if the acquirer buys at least 90 percent of the target's stock after the step one. If the acquirer gets less than 90 percent, it has to use a "long-form" merger, which requires it to mail a proxy statement to all remaining shareholders and hold a stockholder meeting to approve the merger.

Delaware recently enacted a new law that permits parties entering merger agreements after August 1, 2013, to agree to eliminate the need for a stockholder vote for a second-step merger if certain conditions are met, including receiving tenders of at least 50% of the shares. At the same time, Delaware amended its appraisal statute to provide that in connection with a merger under the new law a corporation can send the required notice of the availability of appraisal rights to its stockholders prior to the closing of the offer, and can require them to decide immediately whether to exercise their appraisal rights.

In response to these changes, Delaware corporations have begun notifying their stockholders that all demands for appraisal must be made no later than when the first-step offer is consummated.

The significance of these changes is that acquirers will now know, before they buy a single share of the target, how many shareholders are going to exercise their appraisal rights. This development, in turn, makes it possible for an acquirer to include a dissenting-shareholders condition to its obligation to consummate even step one of the deal, which, is, effectively, a condition to doing the entire deal.

With the rising popularity of appraisal litigation and recent changes to the DGCL, a dissenting-shareholders condition will likely become a common feature in merger agreements.

Anna Karin F. Manalaysay

NY AG Joins the Fight Against Drug Makers' Anticompetitive Agreements

The New York Attorney General (NY AG), Eric T. Schneiderman, has forcefully joined the fight against pharmaceutical manufacturers who enter into anticompetitive agreements, in particular, so-called "No-Challenge" provisions. Pomerantz has for years now been bringing antitrust class action lawsuits, on behalf of consumers, challenging anticompetitive agreements between brand name and generic drug manufacturers that keep generic drugs out of the marketplace and thereby raise prescription drug prices, i.e., so-called "Pay-for-Delay" agreements. The Federal Trade Commission has also been challenging these type of anti-competitive agreements between drug makers for years.

According to Mr. Schneiderman, "agreements between drug manufacturers to protect each other's market positions violate fundamental principles of antitrust law and can lead to higher drug prices." He warned that "drug companies should be aware that my office will intervene aggressively to root out collusion among industry players and ensure that New Yorkers receive access to critical drugs at fair value."

In putting action behind these words, as part of a recent settlement with the NY AG, dated February 12, 2014, two

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NY AG Joins the Fight Against Drug Makers' Anticompetitive Agreements
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generic drug makers – Teva and Ranbaxy – agreed to terminate a so-called "No-Challenge" agreement between the rival companies that blocked the two companies from challenging each other's rights to 180 days of exclusivity for all their pending generic-drug applications. Teva and Ranbaxy also agreed not to enter into similar "No-Challenge" deals in the future and pay $300,000 to New York State. According to Federal Drug Administration regulations, the first generic drug maker that seeks to bring a drug to market (the first-filer) can be eligible for 180 days of selling exclusivity without competition from other generic companies (the second-filer); however, the second filer often challenges the first filer's right to the 180-day exclusivity period, thereby allowing multiple generic drugs into the market at the same time. According to the NY AG settlement, "[t]he [NY AG] considers the No Challenge Provision ... to be an unreasonable agreement between direct competitors not to compete, unlawful under the antitrust laws".

The NY AG settlement terminating the "No-Challenge" agreement/provision appears to be the first of its kind and a new aggressive application of last year's Supreme Court decision, in FTC v. Actavis, that allowed the FTC to peruse a lawsuit against drug makers who pay rivals to delay cheaper generics from entering the market, known as "Pay-for-Delay" agreements. Pomerantz is co-lead counsel, on behalf of a consumer class action, in the companion case to the FTC action that was decided favorably by the Supreme Court and is now back in the Northern District of Georgia (Atlanta). See In re: Androgel Antitrust Litigation (No. II), No. 09-MD-2084 (N.D. Ga.).

"While anti-competitive agreements between brand-name and generic-pharmaceutical companies hurt competition significantly, it's important to recognize that harmful agreements can be entered into in a variety of other contexts," said Liz DeBold, a NY AG spokeswoman. "This settlement with Ranbaxy and *Teva shows that the pay-for-delay precedent can be applied to anti-competitive deals of all types, wherever they may be found.*"

Pomerantz has a long history of fighting for consumers against both brand name and generic pharmaceutical manufacturers who enter into anticompetitive agreements that keep cheaper generic drugs out of the marketplace. We have a case involving Nexium in Massachusetts that is ready for trial; a case involving Lipitor in New Jersey where motions to dismiss are pending; a case involving Flonase in Pennsylvania that was settled on behalf of consumers and third-party payors for $40+ million; and a case involving Toprol in Delaware that was settled on behalf of consumers and third-party payors for $10+ million.

Adam G. Kurtz

notable dates

. . . on the Pomerantz horizon

Jeremy Lieberman: will speak at on the implications for Israeli investors of U.S. securities litigation at the **2014 Tel Aviv Institutional Investment Conference** on March 10 in Tel Aviv, Israel

Cheryl Hamer: will attend the **TEXPERS** Annual Conference , March 23-26 in Fort Worth, TX; **NCPERS** Annual Conference, April 27- May 1 in Chicago, IL; **CII** Spring Meeting, May 7-9 in Washington, DC; **SACRS** Spring Conference, May 13-16 in Sacramento, CA; **ICGN** Annual Conference, June 16- 18 in Beurs Van Berlage, Amsterdam; and the **NAPPA** Legal Education Conference, June 24-27 in Nashville, TN

Joshua Silverman: will present on the essentials of securities litigation March 19 for the **Illinois Public Pension Fund Association** in Chicago, IL

Matthew Tuccillo: will attend the National Association of **State Treasurers' 2014 Legislative Conference** on March 18 and 19 in Washington, DC

Jayne Goldstein: will speak on April 2 at the **Florida Public Pension Trustees Association's Continuing Education Wall Street Program** in New York, NY

Jeremy A. Lieberman

Cheryl D. Hamer

Joshua B Silverman

Matthew L. Tuccillo

Jayne A. Goldstein

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
Nu Skin Enterprises, Inc.	NUS	October 25, 2011 to January 16, 2014	March 24, 2014
Thoratec Corporation (2014)	THOR	April 29, 2010 to November 27, 2013	March 25, 2014
Sarepta Therapeutics, Inc.	SRPT	July 24, 2013 to November 12, 2013	March 28, 2014
Equal Energy Ltd. (W.D. Okla.)	EQU		March 31, 2014
K12 Inc. (2014)	LRN	March 11, 2013 to October 9, 2013	April 1, 2014
AmTrust Financial Services, Inc.	AFSI	February 15, 2011 to December 11, 2013	April 7, 2014
Keyuan Petrochemicals, Inc. (2014)	KEYP		April 7, 2014
Montage Technology Group Limited (N.D. CAL.)	MONT	September 26, 2013 to February 6, 2014	April 8, 2014
Montage Technology Group Limited (S.D.N.Y.)	MONT	September 25, 2013 to February 6, 2014	April 8, 2014
Nicholas Financial, Inc.	NICK		April 11, 2014
City of Monticello, Minnesota	N/A		April 13, 2014
Coty Inc.	COTY		April 14, 2014
Fairway Group Holdings Corp.	FWM	April 16, 2013 to February 6, 2014	April 15, 2014
Intercept Pharmaceuticals, Inc.	ICPT	January 9, 2014 to January 10, 2014	April 22, 2014
The Medicines Company	MDCO	February 20, 2013 to February 12, 2014	April 22, 2014
Immunomedics, Inc. (2014)	IMMU	May 9, 2013 to October 9, 2013	April 28, 2014
InnerWorkings, Inc.	INWK	February 15, 2012 to November 6, 2013	April 28, 2014
Envivio, Inc. (2014)	ENVI	April 25, 2012 to September 6, 2012	April 29, 2014
Conn's, Inc.	CONN	April 3, 2013 to February 19, 2014	May 5, 2014
Galena Biopharma, Inc.	GALE	November 6, 2013 to February 14, 2014	May 5, 2014
LifeLock, Inc.	LOCK	February 26, 2013 to February 19, 2014	May 5, 2014
NII Holdings, Inc.	NIHD	February 25, 2010 to February 27, 2014	May 5, 2014
Walter Investment Management Corp. (2014)	WAC	May 9, 2012 to February 26, 2014	May 6, 2014
Hyperdynamics Corporation (2014)	HDY	November 8, 2012 to March 11, 2014	May 12, 2014
MagnaChip Semiconductor Corporation	MX	January 30, 2013 to March 11, 2014	May 12, 2014
CytRx Corporation	CYTR	November 22, 2013 to March 13, 2014	May 13, 2014
Geron Corporation (2014)	GERN	June 16, 2013 to March 11, 2014	May 13, 2014
UTi Worldwide Inc.	UTIW	December 5, 2013 to February 25, 2014	May 16, 2014

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
Cathay Forest Products Corp. (Canada)	$1,843,399	November 9, 2009 to August 21, 2013	March 31, 2014
American Superconductor Corporation	$10,000,000	July 29, 2010 to July 11, 2011	April 7, 2014
CIBER, Inc.	$3,000,000	December 15, 2010 to August 3, 2011	April 9, 2014
Alange Energy Corp. (n.k.a. PetroMagdalena Energy Corp.) (Canada)	$8,730,180	August 30, 2010 to January 12, 2011	April 10, 2014
Radient Pharmaceuticals Corporation	$2,500,000	January 18, 2011 to March 4, 2011	April 16, 2014
Lehman Brothers Holdings, Inc. (S.D.N.Y.)	$99,000,000	June 12, 2007 to September 15, 2008	April 17, 2014
Diebold Inc. (2010)	$31,600,000	June 30, 2005 to January 14, 2008	April 21, 2014
Citigroup, Inc. (Voluntary FA Capital Accumulation Program)	$8,500,000	November 1, 2006 to June 30, 2009	May 3, 2014
WMS Industries Inc. (2011)	$3,700,000	Sept. 21, 2010 to August 4, 2011	May 5, 2014
Satcon Technology Corporation	$3,000,000	August 5, 2010 to August 10, 2011	May 19, 2014
GEROVA Financial Group, Ltd.	$1,372,000	January 8, 2010 to February 23, 2011	May 20, 2014
Olympus Corporation	$2,603,500	May 8, 2007 to November 7, 2011	May 24, 2014
Ebix, Inc. (2011)	$6,500,000	May 6, 2009 to June 30, 2011	June 4, 2014
infoGROUP, Inc. (Delaware Chancery Court)	$13,000,000	August 20, 2008 to July 1, 2010	June 6, 2014
Lime Energy Co.	$2,500,000	May 14, 2008 to December 27, 2012	June 12, 2014
Safety Components International Inc. (n.k.a. International Textile Group, Inc.) (2008)	$10,000,000		June 16, 2014
K-V Pharmaceutical Company (2008)	$12,800,000	June 15, 2004 to January 23, 2009	June 19, 2014
Aeropostale, Inc.	$15,000,000	March 11, 2011 to August 18, 2011	June 20, 2014
Massey Energy Company (2010)	$265,000,000	February 1, 2008 to July 27, 2010	July 3, 2014
UniTek Global Services, Inc.	$1,550,000	May 18, 2011 to April 12, 2013	July 11, 2014

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POMERANTZ LLP

The Law Firm Institutional Investors Trust
for Securities Monitoring and Litigation

Pomerantz is acknowledged as one of the premier firms in the areas of corporate, securities, antitrust, mergers and acquisitions, and insurance litigation. Founded by the late Abraham L. Pomerantz, known as the 'dean of the class action bar,' the firm pioneered the field of securities class actions. Today, more than 77 years later, Pomerantz continues in the tradition that Abe Pomerantz established, fighting for the rights of victims of securities fraud, breaches of fiduciary duty, and corporate misconduct. Prior results, however, do not guarantee a similar outcome in future cases.

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