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COVID CASES: THREE SECURITIES FRAUD CLASS ACTION LAWSUITS BORN IN THE WAKE OF A GLOBAL PANDEMIC

By James M. LoPiano

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Amid the hurricane-like impact of the COVID-19 pandemic, as businesses struggle to mitigate the impacts of an economic downturn caused by a bevy of disruptive market forces—reduced foot-traffic, shelter-in-place orders, work-from-home protocols, among others—a crop of interesting securities fraud cases have sprung up. While some remain in the early stages of investigation, others have developed into fully-fledged class action lawsuits under the umbrella of the federal securities laws.

Collectively, these cases demonstrate some of the myriad ways that businesses have allegedly misbehaved during the pandemic. Discussed here are just three examples of complaints related to COVID-19 that have recently been filed in federal court alleging violations of the federal securities laws. Each provides an interesting perspective on how COVID-19 has impacted businesses and investors in disparate fields—from travel, to technology, to finance.

Norwegian Cruise Line Holdings Ltd.

It is well-known how the pandemic shut down the travel industry, particularly for those offering cruise packages. Norwegian Cruise Line Holdings Ltd. ("Norwegian") is a publicly traded global cruise company that operates the Norwegian Cruise Line, Oceania Cruise Line, Oceania Cruises, and Regent Seven Seas Cruises brands. Firms initiated securities fraud investigations against Norwegian following publication of a Miami New Times article, which reported that several leaked internal emails appeared to show that Norwegian managers were asking sales staff to lie to customers regarding COVID-19 to protect the company's bookings. According to the article, one such email directed Norwegian's sales team to tell customers that the "Coronavirus can only survive in cold temperatures, so the Caribbean is a fantastic choice for your next cruise." Following the article's publication, Norwegian's stock price fell sharply, thus prompting the investigations.

Since the article's publication, two securities fraud class actions have been filed against Norwegian in the United States District Court ("USDC") for the Southern District of Florida, alleging violations of federal securities laws. Both complaints allege, among other issues, that Norwegian engaged in dubious sales tactics to allay customer fears over possible health risks, using unproven or blatantly false statements about COVID-19 to entice them to book cruises, thus endangering the lives of both their customers and crew members.

These lawsuits not only exemplify the potential need for businesses to reduce sales expectations and related pressures on employees amid a pandemic, but also to ensure that those in management positions are taking the pandemic seriously enough—whether interacting with staff internally, or interacting with potential customers and investors, who put both their money and their lives on the line when relying on the company's statements.

Attorney James M. LoPiano

Zoom Video Communications, Inc.

Zoom Video Communications, Inc. ("Zoom") operates a digital video communications application that exploded in popularity with the COVD-19 pandemic. From 10 million people on Zoom daily as of December 2019, that number has ballooned to approximately 300 million in mid-2020. Until recently, at least, the company's video conferencing services were widely viewed as one of the best alternatives to in-person meetings for both professional and personal circles, especially in light of the social distancing constraints caused by the pandemic.

Problems blossomed almost as fast as the service itself. Firms initiated securities fraud investigations against Zoom following disclosures during the pandemic related to alleged undisclosed cybersecurity weaknesses and privacy violations—with just one example being "Zoom bombings," nicknamed after incidents where malicious third parties had hacked their way into Zoom meetings.

These allegations came to a head in late-March 2020, when major organizations including NASA, SpaceX, and New York City's Department of Education—all of which previously relied on Zoom for remote employee

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communication—banned Zoom's use following news that it shared certain user data with Facebook, even if Zoom users did not have a Facebook account. These organizations also cited allegations that Zoom's video encryption capabilities were not as secure as the company had previously claimed. Adding insult to injury, on April 1, 2020, *Yahoo! Finance* reported that a malicious actor in a popular dark web forum had leaked 352 compromised Zoom accounts' email addresses, passwords, meeting IDs, host keys and names, among other personal information. One such account reportedly belonged to a major U.S. healthcare provider, and seven more to various educational institutions. The impact of these disclosures was particularly alarming given Zoom's widely touted use among businesses and the public during the pandemic. Zoom's stock price fell sharply following these disclosures, prompting firms to investigate.

Attorney Veronica V. Montenegro

Since these issues came to light, two securities fraud class actions have been filed against Zoom in the USDC for the Northern District of California. Both complaints allege, among other issues, that Zoom had inadequate data privacy and security measures, that, contrary to Zoom's assertions, its video communications service was not end-to-end encrypted, and that, as a result, Zoom's users were at an increased risk of having their personal information accessed by unauthorized parties.

These concerns were magnified by the platform's exponentially expanded use during the COVID-19 pandemic, which had essentially turned Zoom into a household name for consumers. With so many businesses and families relying on Zoom's services for remote communication, the importance of Zoom's touted security advantages arguably expanded in the public mindset, thus potentially making inaccuracies in statements concerning such security even more devastating for shareholders.

iAnthus Capital Holdings, Inc.

iAnthus Capital Holdings, Inc. ("iAnthus") is a Canadian holding company whose principal business activity is to provide shareholders with diversified exposure to best-in-class licensed cannabis cultivators, processors, and dispensaries throughout the United States. iAnthus is also heavily leveraged and relies on equity and debt financing to fund its operations.

Securities fraud lawsuits were initiated against iAnthus following its announcement on April 6, 2020 that it did not make interest payments due on certain debentures on March 31, 2020, as a result of financial hardship related to COVID-19. iAnthus' stock price fell sharply following the announcement.

A securities fraud class action complaint has been filed against iAnthus in the District Court for the Southern District of New York. The complaint does not so much allege that iAnthus' missed interest payments were themselves indicative of fraud—after all, many businesses are at risk of default, or have already defaulted, on payments following COVID-19 related difficulties. Rather, the complaint takes issue with iAnthus' previous representations that it would use certain funds withheld and escrowed under debenture agreements to make those payments. According to the complaint, that money was set aside to prevent an interest payment default, yet defendants never disclosed that the escrowed funds had ever been released, exhausted, or were otherwise unavailable to satisfy interest payment obligations. Consequently, the complaint alleges that iAnthus' statements concerning the agreements were false or misleading in light of iAnthus' decision not to use the funds when needed.

Here, circumstances arising from the COVID-19 pandemic arguably called iAnthus' bluff, so to speak, with respect to using the funds at issue in the manner it previously touted.

In Sum

As with society at large, these cases, and others that are sure to follow, are just a small indication that COVID-19 is making an indelible mark on securities litigation as this sudden pandemic has uprooted life, business, and the markets.

POMERANTZ DEFEATS DEFENDANTS' MOTION TO DISMISS THE COMPLAINT AGAINST MYLAN PHARMACEUTICALS

By Veronica V. Montenegro

On April 6, 2020, Pomerantz scored a major victory for investors when it defeated defendants' motion to dismiss the third amended complaint in a securities class action against Mylan Pharmaceuticals, *In re Mylan N.V. Securities Litigation*. This ruling now allows discovery in the case to proceed in full.

Mylan, a drug company that markets a broad range of generic drugs as well as the EpiPen, a branded device that allows the user to autoinject a measured dose of epinephrine to treat anaphylaxis, a life-threatening emergency to which one in thirteen children is susceptible. The amended complaint alleges that Mylan and its executives committed securities fraud by (1) failing to disclose that Mylan was systematically and knowingly misclassifying the EpiPen as a generic drug in order to overcharge Medicaid by hundreds of millions of dollars for its purchases of this pen for Medicaid recipients; (2) failing to disclose that it had entered into exclusive dealing arrangements with commercial insurance companies and pharmaceutical benefit managers in order to prevent competitor Sanofi-Aventis from successfully introducing a product to compete with EpiPen; and (3) failing to disclose that it had entered into, and maintained, anticompetitive agreements with other generic drug manufacturers to allocate the market and fix the prices for virtually all of its generic drugs. The third amended complaint also added James Nesta, the Vice

President of Sales and National Accounts at Mylan, as a defendant and provided allegations that Nesta was a central player in Mylan's market allocation and price-fixing scheme.

With respect to misrepresenting the EpiPen as a generic drug, defendants argued that the statute was ambiguous in describing the classification and that defendants therefore could not have acted with scienter in designating the device as generic. The Court noted that the Right Rebate Act was passed for the express purpose of preventing Mylan from misclassifying the EpiPen and other drugs, and therefore, it "begs belief" that Mylan would be able to hide behind the Act in order to defeat plaintiffs' allegations. Second, plaintiffs pled that the Centers for Medicare & Medicaid Services, the agency that administers Medicaid, explicitly told Mylan on multiple occasions that the EpiPen was misclassified, supporting the scienter claim irrespective of any alleged ambiguities in the classification system.

With respect to the exclusive dealings claim, the Court sustained plaintiffs' allegations that Mylan offered anticompetitive rebates to price its competitor Sanofi-Aventis out of the market for epinephrine autoinjectors. The Court held that plaintiffs had adequately pled that Mylan consciously engaged in an anticompetitive rebate scheme for the purpose of forcing Sanofi from the market, and that Mylan's top executives were personally involved in pricing and thus would have been well aware of the rebates. The Court also held that plaintiffs had sufficiently alleged loss causation in connection with the rebates by alleging that Mylan's stock dropped as a result of the public outcry due to the high price of EpiPen—itself a result of Mylan's anticompetitive conduct—and continued to drop even further when the FTC announced that it was investigating Mylan. As the Court reasoned, a stock price decline following the revelation of an investigation into a particular business practice can be sufficient to support loss causation with respect to alleged misstatements regarding that practice.

With respect to claims concerning anticompetitive agreements, the Court allowed plaintiffs' claims of failure to disclose price fixing and market allocation to proceed with respect to 21 generic drugs.

Finally, the Court permitted plaintiffs' claim for scheme liability to proceed against Mylan Vice President Jim Nesta. Mylan argued that plaintiffs had not adequately pleaded that Nesta committed the requisite deceptive or manipulative acts necessary to allege scheme liability. However, the Court held that plaintiffs had, indeed, adequately alleged that Nesta participated in Mylan's anticompetitive scheme by submitting cover bids that were intended to create the false impression that they were competitive. It held that "Because this Court concludes that the submission of cover bids is a deceptive act sufficient to support a scheme liability claim, Plaintiffs' claims against Defendant James Nesta survive." With scant precedent for scheme liability in securities litigation, this opinion sets an important precedent.

Partner Gustavo F. Bruckner

DIRECTOR OVERSIGHT: SEEKING THE HOLY GRAIL

By Gustavo F. Bruckner

Under Delaware law, corporate directors and officers are duty-bound to adopt internal control and reporting systems that are reasonably designed to provide them with timely, accurate information sufficient to make informed decisions. Directors and officers face a substantial threat of liability if they knowingly or systemically fail to (1) implement reporting policies or a system of controls; or (2) monitor or oversee the company's operations. If the oversight failures result in losses to the company, the directors and officers responsible could be held personally liable. This claim is commonly referred to as a "*Caremark*" claim, in reference to the 1996 Delaware case that set out the legal standard governing a board of directors' oversight obligations.

A *Caremark* claim is possibly the most difficult type to pursue in corporate law, as most do not even survive the pleading stage. To survive a motion to dismiss, the complaint must plead specific facts demonstrating that the board totally abdicated its oversight responsibilities. Even the court in *Caremark*, a case which involved indictments for Medicaid and Medicare fraud, could not conclude that such a breach had occurred in that case.

Later decisions further constrained *Caremark*'s applicability to preclude a claim of director liability based solely on ignorance of corporate wrongdoing. Rather, only a sustained or systematic failure of the board to exercise oversight—such as an utter failure to attempt to assure that a reasonable information and reporting system exists—will establish the lack of good faith that is a necessary condition to liability under *Caremark*.

Commentators have characterized the successful pursuit of a *Caremark* claim as the Holy Grail of corporate law. Yet, just in the past year alone, Delaware courts have thrice allowed a *Caremark* claim to proceed. The first two of these cases, previously cited in the *Monitor, Marchand*

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v. Barnhill (Blue Bell) and *In re Clovis Oncology*, were examples of fiduciary duty breaches that resulted in extreme repercussions.

In *Blue Bell*, a listeria outbreak at one of the largest ice cream manufacturers in the country had resulted in three customer deaths. The court held, among other things, that the complaint fairly alleged that no board committee that addressed food safety existed; no regular process or protocols that required management to keep the board apprised of food safety compliance practices, risks, or reports existed; no schedule existed for the board to consider food safety risks on a regular basis; and the board meetings were devoid of any suggestion that there was any regular discussion of food safety issues. The *Blue Bell* court was focused primarily on the alleged failure of the board to have made a good faith effort to establish appropriate oversight systems in connection with a "mission critical" regulatory compliance issue.

In *Clovis*, by contrast, the focus was not on the failure to have an oversight system, but the alleged failure to pay attention to reports generated by that system. Clovis, a bio-pharmaceutical start-up, initiated clinical trials for its lung cancer drug, committing to a well-known clinical trial protocol and FDA regulations. The company consistently stated to the public and regulators that the drug achieved certain objective response rates in shrinking tumors. The Clovis board, however, had received internal reports that these rates were inflated. The *Clovis* court found that plaintiffs had successfully pled that the board had abdicated its responsibility by consciously ignoring red flags when it failed to correct the company's reporting related to the success of its drug.

Most recently, in *William Hughes Jr. v. Xiaoming Hu, et al. (Kandi Technologies)*, the court allowed a *Caremark* claim to proceed against several directors of Kandi Technologies Group, Inc., a Chinese auto parts manufacturer. Unlike in *Blue Bell* and *Clovis*, the breaches by the Kandi board did not have life or death implications. The claim in Kandi was that defendants "breached their fiduciary duties by willfully failing to maintain an adequate system of oversight disclosure controls and procedures, and internal controls over financial reporting."

In 2014, Kandi publicly announced the existence of material weaknesses in its financial reporting and oversight system, including a lack of oversight by its Audit Committee and lack of internal controls for related-party transactions. The company pledged at the time to remedy these problems. Instead, in 2017, the company disclosed that it needed to restate the preceding three years of financial statements. In connection with this restatement, Kandi also disclosed that it lacked sufficient expertise relating to US GAAP requirements and SEC disclosure regulations, proper disclosure of related-party transactions, effective controls over proper classification of accounts receivables and payables; and the accuracy of income tax accounting and reporting.

Plaintiff made a request for production of books and records pursuant to Delaware General Corporation Law Section 220. In response, Kandi produced some documents and stipulated that "any remaining materials requested by Plaintiff either do not exist or had been withheld on privilege grounds."

Plaintiff then brought an action claiming that the board's actions were a *Caremark* violation. The books and records that were produced revealed that the Audit Committee of the Kandi board met only once every year, for less than an hour at a time. The Court concluded that it was reasonable to infer that during these short, infrequent meetings, the Audit Committee could not have fulfilled its responsibilities under its charter for a year's worth of transactions. Additionally, during those short meetings, the Audit Committee purportedly reviewed new agreements governing the company's related party transactions and approved a new policy that management had prepared governing related party transactions.

However, because these agreements and new policy were never produced to plaintiff in response to its inspection demand, the Court concluded that, pursuant to the stipulation, it was reasonable to infer that they neither existed nor imposed meaningful restrictions on company insiders. Furthermore, the Audit Committee, by unanimous written consent, replaced its auditor and attributed the decision to management's determination that it was in the company's best interest to change its independent auditors.

The Court concluded that these chronic deficiencies supported a reasonable inference that the Kandi board, acting through its Audit Committee, failed to provide meaningful oversight over the company's financial statements and system of financial controls. The Court noted that, under Caremark, while an audit committee may rely in good faith upon reports by management and other experts, there must be some degree of board-level monitoring and not blind deference and complete dependence on management.

Lastly, defendants argued that, even if they failed to fulfill their oversight duties, they should not be subject to liability because the company did not suffer harm as a result. The Court found that argument misplaced. Even though there were no quantifiable damages to net income, defendants were still liable for damages incidental to the breach, including the costs and expenses incurred with the restatements, the reputational harm in the market, and the defense of the various stockholder litigations.

For plaintiffs' lawyers, the Kandi decision reiterated the importance of seeking pre-suit books and records to bolster a litigation. It also provided a roadmap for inquiry as to the proper functioning of an audit committee. For corporate boards, Kandi evidenced that merely going through the motions will not be sufficient. The absolute minimum is simply not enough to avoid liability, even absent quantifiable damages. It may have also revealed that reaching the Holy Grail of corporate law need not be a matter of life and death.

Q&A

Murielle Steven Walsh

From class actions involving #MeToo misconduct *(Ferris v. Wynn Resorts Ltd.)*, wearable health technology *(Robb v. Fitbit Inc.)*, and digital games that create real-world nuisances *(Pokémon Go)*, Pomerantz partner Murielle Steven Walsh has been at the forefront of many cutting-edge issues that are not only challenging society and shareholder values, but also challenging the scope of securities law with novel and untested legal theories. Since joining the Firm in 1998, she has prosecuted numerous high-profile, highly successful securities class action and corporate governance cases. Murielle was recently honored as a 2020 Plaintiffs' Lawyer Trailblazer by the *National Law Journal*.

The ground-breaking litigation that you pursued as lead counsel in the *Pokémon Go* case involved gameplay in the digital world that crossed over to actions taken in the real world. Can you tell us more about that case?

MSW: Pokémon Go is an "augmented reality" game in which players use their smartphones to "catch" Pokémon in real-world surroundings. Niantic, the game's creator, placed Pokémon and other game items on private property using GPS coordinates, thereby encouraging players to trespass onto those properties so that they could advance in the game. This naturally resulted in mass trespass and nuisance. We filed a case against Niantic alleging that it committed trespass by putting its game items on private property without permission. This case was a true trailblazer because the body of law on trespass to date had not addressed trespass by virtual objects. The court recognized that our claims were novel but denied the defendants' motion to dismiss because "novel and open issues cut strongly against dismissal."

We secured a very favorable settlement with defendants in which they agreed to quickly remove game items from private single-family properties upon request, and to take proactive measures to avoid placing game items on private property in the future. The defendants will also pay for an independent audit to make sure they are complying with all the settlement requirements.

As #MeToo-related litigation accelerates, what should companies be taking away when it comes to the actionability of their statements about their Code of Conduct? And should a Code of Conduct be held as a statement in its own right?

MSW: Recently, as a result of the #MeToo movement, investors have filed cases alleging that companies misled them by claiming to have a Code of Conduct to ensure legal compliance and a high standard of ethics, while at the same time their executives were engaging in sexual harassment and/or discrimination. A few courts have upheld these complaints and permitted the cases to proceed, showing that corporations must be more vigilant about their executives' misconduct because this information is increasingly very important to investors.

Pomerantz is representing investors in a class action against Wynn Resorts. The case alleges that Wynn's founder and CEO, Steve Wynn, had been engaging in egregious sexual misconduct against the company's female employees, that Wynn's senior management was actively covering up his conduct, and that the Company failed to report the misconduct to gaming regulators as legally required. While all this was happening, the company was falsely assuring investors that it was committed to enforcing legal and ethical conduct, and at one point outright publicly denied that it had withheld information from regulators. On May 27, 2020, the court granted the defendants' motion to dismiss, but granted us leave to amend, which we will certainly do, and we are hopeful that the court will sustain our amended pleadings. We feel strongly about this case and we always believe in fighting the good fight.

With the *Allergan* litigation, you successfully prevailed against a motion to dismiss based on the claim that a statement was literally true but actually misleading. Can you elaborate on the nuance of that position in this case?

MSW: The case against Allergan, which manufactures textured breast implants, challenges the defendant's statements during the class period about a "possible link" between breast implants generally and the development of a rare but potentially fatal lymphoma, ALCL. But they didn't disclose that their products had actually been associated with a higher risk of ALCL than other manufacturers. So, even though Allergen's statement disclosing "a possible link" between ALCL and implants was a literally true statement, it was nonetheless misleading because it conveniently omitted the fact that their products specifically were linked to a higher incidence risk. Thus, the defendants took a literally true statement and softened it to the point that it was misleading. Courts have gone both ways on this issue, but in this case the court sided with us.

Your work on *EBC I v. Goldman Sachs* led to a landmark ruling involving the fiduciary duty that underwriters owe to IPO issuers. What was the biggest challenge that you faced in making this case?

MSW: We represented a bankrupt issuer, eToys, in a case against the lead underwriter of its IPO, alleging that it breached its fiduciary duty by underpricing the IPO. The underwriter had an incentive to underprice because it allocated the shares to its favored clients, who reaped huge profits by immediately flipping the shares. At the time, this was quite a novel claim. Goldman Sachs argued that the lead underwriter-issuer relationship is an arm's length transaction, and no more. But we were able to convince the Court that a fiduciary duty can arise where the issuer relies on the underwriter and its superior expertise to price the IPO with the client's best interests in mind.

The typical compensation structure in an IPO further supports a fiduciary duty claim. The lead underwriter earns its fee as a certain percentage of the IPO price - which would give the issuer even more reason to believe that the underwriter's interests were aligned with the issuer in pricing the stock as high as possible.

The trial court agreed with us and upheld the fiduciary duty claim, and Goldman Sachs appealed the issue up to the New York Court of Appeals. We prevailed there as well and obtained a landmark decision.

Can you speak about your work as a member and Secretary of the Board of Trustees of CASA (Court Appointed Special Advocates of Monmouth County)?

MSW: I serve on the executive committee of the Board of Trustees for CASA in Monmouth County. At CASA, volunteers are trained to work on cases that involve children who were removed from their homes because of abuse or neglect. After removal, the court has to step in to determine the long-term placement of the child. Before CASA was founded, courts didn't have enough factual information about a child's specific situation in order to make this very critical decision. CASA volunteers work with the child, gather facts about the child's family and specific situation, and identify what other supportive individuals the child has in her or his life. With this information, they make a recommendation to the judge regarding h long-term placement. In many cases, CASA volunteers are the only consistent adult presence for the child during this very traumatic time. CASA's work is so important, and I'm proud to be part of it.

Learn more about Murielle in her Lawyer Limelight on Lawdragon and in her Pomerantz bio.

LETTER TO THE EDITOR

A Tribute to H. Adam Prussin

H. Adam Prussin

February 2004: George W. Bush is President. Howard Dean, John Kerry, and Joe Lieberman are frontrunners in the Democratic primaries. A study reports that the 1918 flu virus that killed 20 million people may have had a unique bird-like protein and other similarities to the 2004 outbreak of bird flu in east Asia. The SEC adopts enhanced rules for mutual fund expenses and portfolio disclosures, part of the fall-out from the mutual fund late-trading scandal of 2003. Pomerantz drops the inaugural issue of *The Pomerantz Monitor*, with Partner H. Adam Prussin at the helm.

For over sixteen years, Adam's *Monitor* has covered developments in securities litigation, corporate governance, and government policy, giving readers the backstory for and insight into complex and essential matters. In its first issue, the *Monitor* reported on California's State Treasurer's proposal that California's two largest pension funds, CALPERS and CALSTRS, target $1 billion of their investment assets into "environmentally screened" funds, and another $500 million into corporations that nurture "clean" technologies. The Treasurer's justification was that companies that are not focused on reducing pollution face the risk of huge clean up costs in the future. Opined Adam, "This strategy is viewed as an effort to exert market pressure to address global warming and other environmental concerns that have not been at the top of this administration's regulatory agenda." Our readers gained insight into the nexus of environmental stewardship and the market more than a year before the term "ESG investing" was coined.

Among other relevant matters, the inaugural issue provided insight into a controversial pension reform bill passed by the Senate in January 2004 allowing companies to reduce their contributions to employee pension plans by about $80 billion over the next two years. The bill was a response to concerns that, because of a three year long bear market, required funding obligations had sky-rocketed and companies were having difficulty keeping up.

As a seasoned, expert securities fraud litigator with hard-won successes under his belt, Adam approached each issue by suggesting salient topics for Pomerantz attorneys to cover. His editing process entailed an intentional back-and-forth exchange, particularly with associates, utilizing pointed questions and strategic prodding through which Adam teased out each author's best work. He trained a generation of young Pomerantz attorneys to write cogently and to transform arcane legalese into fresh, accessible narrative.

Did we mention Adam's sense of humor? Whenever possible – and appropriate – he brought a playful sensibility to his musings on corporate malfeasance, official obstructionism and just plain ridiculousness. Sometimes the humor was in his headlines, as with a 2013 article he wrote that began:

> As JPMorgan Chase struggled to put the finishing touches on its $13 billion settlement with the federal government over its misadventures in the mortgage-backed securities area, a major ingredient in the government's success seems to have come from out of nowhere – or, more precisely, from the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"). This provision, enacted in the wake of the savings and loan meltdown of the 80's, has been pulled out of the mothballs to punish some of the misbehaving financial institutions that brought about the financial crisis of 2008.

The article's headline: "FIRREA: No, It's Not a Disease, Unless You Are a Naughty Financial Institution."

According to Managing Partner Jeremy Lieberman, "In many ways, the Monitor serves as the Firm's voice for the 21st century, allowing us room to explore critical rulings, issues and developments that we believe are important for our clients to be aware of and better understand. Adam was key in elevating these conversations at every step and building a publication that we are all proud to share."

After sixteen years at the helm of the Monitor, this is Adam's last issue. The *Monitor* will sally forth, while Adam segues into a well-deserved retirement. We thank you, Adam, for guiding us so well for so many years.

CORPORATE GOVERNANCE ROUNDTABLE EVENT

WITH SPECIAL GUEST SPEAKER

PRESIDENT BILL CLINTON

HOSTED BY

SAVE THE NEW DATE

JANUARY 13, 2021

WALDORF ASTORIA BEVERLY HILLS CALIFORNIA

Please join institutional investors and corporate governance professionals from around the globe to discuss the evolving role of institutional investors, ESG risk and governance challenges, featuring Remarks by President Bill Clinton.

Seating is limited. To reserve your place, please email: pomerantzroundtable2021@pomlaw.com

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
Bed Bath & Beyond Inc.	BBBY	October 2, 2019 to February 11, 2020	June 15, 2020
iAnthus Capital Holdings, Inc.	ITHUF	May 14, 2018 to April 6, 2020	June 15, 2020
iQIYI, Inc.	IQ	March 29, 2018 to April 7, 2020	June 15, 2020
GSX Techedu, Inc.	GSX	June 6, 2019 to April 13, 2020	June 16, 2020
Baidu, Inc.	BIDU	March 16, 2019 to April 7, 2020	June 22, 2020
Akazoo S.A.	SONG	September 11, 2019 to April 20, 2020	June 23, 2020
Phoenix Tree Holdings Limited	DNK	Re January 22, 2020 IPO	June 23, 2020
Groupon, Inc.	GRPN	November 4, 2019 to February 18, 2020	June 29, 2020
SCWorx Corp.	WORX	April 13, 2020 to April 17, 2020	June 29, 2020
Hallmark Financial Services, Inc.	HALL	March 5, 2019 to March 17, 2020	July 6, 2020
Grand Canyon Education, Inc.	LOPE	January 5, 2018 to January 27, 2020	July 13, 2020
Conn's, Inc.	CONN	September 3, 2019 to December 9, 2019	July 14, 2020
Cytomx Therapeutics, Inc.	CTMX	May 17, 2018 to May 13, 2020	July 20, 2020
Elanco Animal Health, Inc.	ELAN	January 10, 2020 to May 6, 2020	July 20, 2020
Ryder System, Inc.	R	July 23, 2015 to February 13, 2020	July 20, 2020
Hamilton Beach Brands Holding Company	HBB	February 27, 2020 to May 8, 2020	July 21, 2020
Carnival Corporation	CCL	January 28, 2020 to May 1, 2020	July 27, 2020
Colony Capital, Inc.	CLNY	August 9, 2019 to May 7, 2020	July 27, 2020
Sorrento Therapeutics, Inc.	SRNE	May 15, 2020 to May 22, 2020	July 27, 2020

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
Silver Wheaton Corporation	$41,500,000	March 30, 2011 to July 6, 2015	June 13, 2020
EverQuote, Inc.	$4,750,000	June 28, 2018 to February 15, 2019	June 25, 2020
Community Health Systems, Inc.	$53,000,000	July 27, 2006 to April 8, 2011	June 27, 2020
GT Advanced Technologies Inc. (Apple, Inc.)	$3,500,000	November 5, 2013 to October 6, 2014	June 29, 2020
EndoChoice Holdings, Inc.	$8,500,000	June 5, 2015 to August 3, 2016	June 30, 2020
RMG Networks Holding Corporation	$1,500,000	N/A	June 30, 2020
First Solar, Inc.	$350,000,000	April 30, 2008 to February 28, 2012	July 1, 2020
Forterra, Inc.	$5,500,000	October 19, 2016 to August 14, 2017	July 10, 2020
Vale S.A.	$25,000,000	May 8, 2014 to November 27, 2015	July 14, 2020
LifeLock, Inc.	$20,000,000	July 31, 2014 to July 21, 2015	July 16, 2020
SeaWorld Entertainment, Inc.	$65,000,000	August 29, 2013 to August 12, 2014	July 16, 2020
Collins & Aikman Corp. (SEC Fair Fund)	$2,800,000	February 21, 2002 to May 17, 2005	July 17, 2020
Namaste Technologies Inc. (Canada)	$2,150,000	November 29, 2017 to February 3, 2019	July 17, 2020
HD Supply Holdings, Inc.	$50,000,000	November 9, 2016 to June 5, 2017	July 18, 2020
Equifax Inc.	$149,000,000	February 25, 2016 to September 15, 2017	July 22, 2020
SCANA Corporation	$192,500,000	October 27, 2015 to December 20, 2017	July 25, 2020
Liberator Medical Holdings, Inc. (JMP)	$3,000,000	Holders on January 21, 2016	July 28, 2020
Camping World Holdings, Inc.	$12,500,000	October 6, 2016 to August 7, 2018	July 30, 2020
Revolution Lighting Technologies, Inc.	$2,083,333	March 14, 2014 to November 14, 2018	July 30, 2020
Endeavour Resources, Inc. (Canada)	$560,478	N/A	July 31, 2020
B Communications Ltd.	$1,200,000	March 18, 2015 to September 6, 2017	August 17, 2020
Catalyst Hedged Futures Strategy Fund	$3,325,000	November 1, 2014 to June 30, 2017	August 17, 2020
Menlo Therapeutics, Inc.	$9,500,000	Pursuant to January 29, 2018 IPO	August 17, 2020
Signet Jewelers Ltd.	$240,000,000	August 29, 2013 to May 25, 2017	August 28, 2020
Henry Schein, Inc.	$35,000,000	March 7, 2013 to February 12, 2018	September 2, 2020
LIBOR (Eurodollar Futures) (Antitrust) (Barclays)	$19,975,000	January 1, 2003 to May 31, 2011	December 1, 2020

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