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THE SUPREME COURT CLOSES ANOTHER DOOR TO CLASS ARBITRATION

By Aatif Iqbal

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In *Lamps Plus, Inc. v. Varela,* the Supreme Court issued the latest in a series of recent 5-4 decisions that have transformed arbitration law so as to make it much more difficult for plaintiffs to pursue claims as a class, whether in court or before an arbitrator. Following this decision, if an arbitration agreement is ambiguous about class arbitration, courts cannot rely on state contract law to interpret it in a way that best effectuates the contracting parties' bargain. Instead, courts are now required to adopt a heavy presumption that arbitration agreements always prohibit class actions unless they include explicit authorization for class arbitration.

These cases involved the Federal Arbitration Act (the "FAA"), a 1925 law intended "to enable merchants of roughly equal bargaining power to enter into binding agreements to arbitrate commercial disputes." Arbitration offers contracting parties procedural flexibility to tailor a dispute resolution process to their specific commercial needs, which may include the efficient resolution of simpler disputes as well as expert resolution of technical disputes using procedural and evidentiary rules tailored to the industry. The FAA sought to overcome judicial hostility to arbitration by requiring courts to interpret and enforce arbitration agreements the same as any other contract—i.e., to apply the same state law governing all other contracts and to effectuate the bargain of the parties instead of imposing courts' own views of procedural fairness and efficiency.

However, commercial contracts are very different from most consumer and employment contracts. Procedural flexibility is less likely to be abused in commercial contracts because both parties have a shared incentive to structure a neutral process that can efficiently provide real relief. But in consumer and employment contexts, companies know they will be defendants and so have strong incentives to design and impose arbitral procedures that are one-sided at best and sometimes even *deliberately inefficient* in order to deter plaintiffs from bringing claims. (For example, prohibiting class actions essentially mandates individualized proceedings, which can be prohibitively costly and inefficient for many employee and consumer claims.) And in the past decade, the Supreme Court's conservative wing—driven by its own hostility towards class actions—has not only approved of this practice but has increasingly used the FAA to create its own special rules for arbitration agreements, overriding state laws governing every other type of contract.

Lamps Plus, Inc. v. Varela illustrates this perfectly. The arbitration agreement in that case was part of an employment contract. Unlike commercial contracts, employment and consumer contracts are usually written entirely by the company and then offered on a take-it-or-leave-it basis. Ordinarily, under the law of all 50 states, any ambiguities in a contract written entirely by a company are interpreted against the company and in favor of the employee or consumer. The rationale is that the company had every opportunity to protect its interests by writing clearer contractual language and so should not be able to benefit from any ambiguities it created.

Attorney Aatif Iqbal

But the Supreme Court did not apply this rule. The arbitration agreement did not explicitly authorize or waive class arbitration, but it did suggest in several places that class arbitration was available. First, it stated that "arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings"—and "any and all lawsuits" plainly includes class actions. Second, it allowed the arbitrator to "award any remedy allowed by applicable law"—which plainly includes a judgment on behalf of a class. Third and most importantly, the agreement provided for arbitration "'in accordance with'" the rules of a specific arbitral forum *whose rules allowed for class arbitration.* As Justices Kagan and Sotomayor pointed out in their dissents, an employee reading the contract would have little reason to think they were waiving the right to proceed as a class. Thus, under ordinary contract law, an ambiguous contract like this should be interpreted in favor of the employee. If the employer cared about avoiding class arbitration, it had every opportunity to be clearer.

Nevertheless, the Supreme Court held that arbitration agreements did not have to be clear in order to prohibit class arbitration. The majority's stated rationale was that "shifting from individual to class arbitration is a 'fundamental' change … that 'sacrifices the principal advantage of arbitration' and 'greatly increases risks to defendants'" and therefore was so "markedly different from the traditional individualized arbitration contemplated by the FAA" that ambiguity was not enough. However, this rationale had

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no basis in the FAA, which never specifies any primary "advantage" of arbitration nor favors any particular kind of arbitral proceeding. (If anything, the whole point of the FAA was that *contracting parties* get to decide what they consider the "principal advantage" of arbitration for themselves, and courts can't use their own procedural views as excuses to treat arbitration agreements differently from other contracts.) Rather, as Justice Kagan pointed out in dissent, the Court simply used its "policy view … about class litigation" to "justify displacing generally applicable state law about how to interpret ambiguous contracts." Moreover, while the conservative majority took great pains to protect corporate defendants from "increased risk," it ignored the risks that its ruling will create for the other contracting parties, *i.e.,* consumers and employees, who will have no practical remedy to vindicate their contractual rights.

Notably, class-action waivers *outside arbitration agreements* rarely receive such special treatment, and their enforceability is much less clear. So after *Lamps Plus,* an arbitration agreement that is silent or deliberately vague about class arbitration is more reliable at blocking class claims than an explicit class-action waiver in a normal non-arbitration contract. This creates some strange incentives for companies that might otherwise have no interest at all in arbitration.

STATEMENTS ABOUT CORPORATE LEGAL AND REGULATORY COMPLIANCE CAN CONSTITUTE SECURITIES FRAUD

By Jonathan Lindenfeld

In the wake of the financial crisis of 2008, investors have become more attuned to and concerned about the risks companies face, yet may fail to disclose to the market. Consequently, when previously undisclosed news of, for example, a company's legal liability is revealed to the market or actually materializes, the company's stock price may well drop sharply, damaging investors. Over the last few years, investors have increasingly brought securities claims over such conduct, sometimes referred to as "event-driven" litigation.

In March of this year, the Second Circuit issued a decision in *Singh v. Cigna Corp.,* which had one such event-driven claim which turned on whether the company's public statements concerning its legal compliance were "material" to investors.

Singh arose from Cigna Corp.'s acquisition of HealthSpring, Inc. for $3.8 billion in early 2012. Cigna, a health insurance and services company, acquired HealthSpring in order to grow its Seniors and Medicare business segment. At the time of the acquisition, HealthSpring was one of the largest private Medicare insurers in the United States. Accordingly, HealthSpring was heavily regulated by the Center for Medicare and Medicaid Services ("CMS").

Prior to the acquisition, HealthSpring had a spotless compliance track record—having never been cited for non-compliance by the CMS. That changed following the acquisition. Although Cigna's acquisition first appeared to be successful, with HealthSpring becoming Cigna's largest source of revenue within one year, shortly after the acquisition was completed Cigna began to receive CMS notices for non-compliance in its HealthSpring operations.

Between October 2013 and January 2016, Cigna received a total of 75 Notices of Non-Compliance from CMS, culminating in January 2016, when the regulator imposed severe sanctions on the company. On January 21, 2016, CMS notified Cigna that it would be imposing immediate sanctions which would prohibit it from writing any new Medicare policies, a significant blow to its most profitable business segment. Notably, CMS specifically concluded that "Cigna substantially failed to comply with CMS requirements" and that it "had a *longstanding history of non-compliance with CMS requirements*" as demonstrated by the receipt of numerous prior notices.

By November 2016, Cigna had spent $100 million to remedy the problems identified by CMS, and was not yet finished. The sanctions were finally lifted on June 16, 2017.

Plaintiff, representing a class of investors who purchased Cigna stock after the acquisition, alleged four sets of misrepresentations concerning Cigna's track record of legal compliance. First, Cigna stated in an annual report on Form 10-K filed with the SEC that it had "established policies and procedures to comply with applicable requirements." Second, the Company repeatedly stated in its annual reports that it "allocate[s] significant resources to [its] compliance, ethics and fraud, waste and abuse programs to comply with the laws and regulations[.]" Third, Cigna acknowledged in its annual reports that failure to comply with state and federal health care laws and regulations can result in "fines, limits on expansion, restrictions or exclusions from programs or other agreements with federal or state governmental agencies that could adversely impact [Cigna's] business, cash flows, financial condition and results of operation." Finally, the Plaintiff alleged that Cigna's Code of Ethics and Principles of Conduct included a quote by one of the officer defendants which stated that it is important for Cigna to do things "the right way," which includes reporting financial results fairly and accurately. Moreover, the quote continued that "it's so important for every employee on the global Cigna team to handle[,] maintain, and report on this information in compliance with all laws and regulations."

The district court dismissed the action, holding that Cigna's statements about compliance were so vague and conclusory that they amounted to mere "puffery," and were so immaterial that investors could not reasonably rely on them. After plaintiff appealed the district court's decision to dismiss his claims, the Second Circuit reviewed the materiality of the alleged misstatements. A misrepresentation is material if "there is a substantial likelihood that a reasonable person would consider it important in deciding whether to buy or sell shares of stock." The statement must also be "mislead[ing]," which is evaluated not only by "literal truth," but by "context and manner of presentation."

The plaintiff in *Singh* argued that the each of the three sets of alleged misrepresentations were material and misleading because "a reasonable stockholder would rely on these statements as representations of satisfactory legal compliance by Cigna." The Second Circuit disagreed, affirming the dismissal.

First, the Second Circuit characterized the Code of Ethics statement as "a textbook example of puffery," as it expressed "general declarations about the importance of acting lawfully and with integrity." Accordingly, the Court found that no investor would rely on such statements.

Similarly, the Court categorized Cigna's statements in its annual reports concerning its "established policies" and its "significant"' allocation of resources to compliance programs as mere "representations of satisfactory compliance," which again, the Court found that no investor would reply upon. In making this determination, the Court distinguished Cigna's statements in its annual reports from the "descriptions of compliance efforts [which] amounted to actionable assurances of actual compliance" made by defendants in *Meyer v. JinkoSolar Holding Co.,* which were found to be actionable.

Finally, the Second Circuit found that each of Cigna's statements in its annual reports were "framed" by acknowledgements of the complexity of applicable regulations. As a result, the Court found that Cigna sufficiently "caution[ed] (rather than [instill] confidence) regarding the extent of Cigna's compliance," and therefore, "these statements seem to reflect Cigna's uncertainty as to the very possibility of maintaining adequate compliance mechanism in light of complex and shifting government regulations."

The defense bar has already hailed this decision as a lethal arrow in their quiver, claiming that it "will likely increase the dismissal rate of [event-driven securities] claims" and instructing defendants to "rely aggressively on *Singh* in seeking to have such suits dismissed." Adam Hakki and Agnès Dunogué, "2nd Circ.'s Logical Take On 'Event-Driven' Securities Claims," LAW360, May 13, 2019.

Singh, however, is far from the decisive victory the defense bar promotes it to be. In the short time since it was handed down, district courts have continued to uphold securities claims concerning statements of legal compliance. In a recent decision following *Singh,* Signet Jewelers Limited argued that the Second Circuit's opinion demanded that the plaintiff's pleadings concerning Signet's harassment protections in its Code of Conduct and Code of Ethics did not amount to material misrepresentations, and must be dismissed. Judge Colleen McMahon of the Southern District of New York found otherwise. Judge McMahon explicitly held that "**Cigna** did not purport to change the well-established law regarding materiality. It did not announce a new legal rule, let alone one deeming an entire category of statements — those contained in a company's code of conduct — *per se* inactionable."

Signet is not an outlier. In March of 2019, two months after *Singh* was decided, Judge Louis L. Stanton was presented with alleged misrepresentations in the Code of Ethics of Grupo Televisa, S.A.B., a multinational media conglomerate, following criminal charges that the company illegally paid bribes to obtain television rights to the FIFA world cup. Just as in *Signet,* defendants argued that the statements contained in the company's code of ethics were mere puffery. Judge Stanton disagreed and found that the broad statements in the code of ethics (affirming the company's commitment to legal compliance and prohibition of bribery) were actionable because they "were made repeatedly in an effort to reassure the investing [public] about the Company's integrity, a reasonable investor could rely on them as reflective of the true state of affairs at the Company."

The Second Circuit's decision in *Singh* demonstrates the importance and challenges of bringing securities claims over legal and regulatory failures by public corporations. The take-away of *Singh* for securities plaintiffs is that they must be evermore diligent in their pleadings, ensuring that judges are presented with specific and detailed representations concerning a company's compliance such that investors would be justified in taking them seriously.

Signet and *Grupo Telavisia* demonstrate that *Singh* certainly does not ring the death knell for similar types of event-driven litigation. Nevertheless, as the defense bar continues to rely upon this decision, it is critical for securities plaintiffs to monitor the decision's precedential value.

Partner Emma Gilmore

STATEMENTS ABOUT [THE ABSENCE OF] GENDER DISCRIMINATION CAN CONSTITUTE SECURITIES FRAUD

Emma Gilmore

With the emergence of the #MeToo movement, courts have seen an increasing number of securities fraud class actions based on allegations involving sexual discrimination, harassment and other types of sexual misconduct. Such misconduct by itself does not constitute securities fraud. The added element that makes it a fraud is some public statement by the company to the effect that it does not engage in such conduct.

When securities fraud actions involve allegations of sexual misconduct, the claims asserted typically involve public statements issued by a company about corporate values, integrity, and adherence to ethical standards, which are alleged to be false and misleading in light of actual misconduct known inside the company. That is exactly what happened at Signet Corporation.

The company had gone out of its way to portray itself as harassment-free in its securities filings and other public statements. It highlighted its Code of Conduct, which said that Signet "made employment decisions 'solely' on the basis of merit"; that it was "committed to a workplace that

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is free from sexual, racial, or other unlawful harassment" and does not tolerate "[a]busive, harassing, or other offensive conduct ... whether verbal, physical, or visual"; that it has "[c]onfidential and anonymous mechanisms for reporting concerns"; that it disciplines "[t]hose who violate the standards in this Code"; and that it requires its senior officials to"[e]ngage in and promote honest and ethical conduct." In its Form 20-F, filed with the SEC, Signet represented that adherence to the Codes, including by senior executives, was of "vital importance." It represented that, in adopting both the Code of Ethics and the Code of Conduct, the company has "recognized the vital importance to the Company of conducting its business subject to high ethical standards and in full compliance with all applicable laws and, even where not required by law, with integrity and honesty." It said that it was committed to disciplining misconduct in its ranks and providing employees with a means to report sexual harassment without fear of reprisal.

According to the securities class action complaint, reality was far different. The alleged sexual misconduct at Signet was at the heart of an arbitration proceeding (the "*Jock*" action) brought by approximately 200 allegedly victimized employees. Although the *Jock* proceeding was supposed to be confidential, some details about the experiences of these employees became public in February 2017 and were published in the *Washington Post*. Many female employees had accused the company of discriminatory pay and promotion practices based on their gender. There were also credible accusations in the *Jock* proceeding that Signet had a culture of rampant sexual harassment – including, but not limited to, conditioning subordinate female employees' promotions to their acceding to the sexual demands of their male supervisors (even those who held the highest positions in the company), and retaliating against those who reported this misconduct. Women alleged that sexual harassment routinely occurred at the company's "Managers' Meetings," where male executives "sexually prey[ed]" on female subordinates.

As discussed in the previous article in this issue, the recent decision in the *Signet* securities litigation forcefully rejected defendants' argument, based on the Second Circuit's decision in *Singh v. Cigna Corp.,* that descriptions of codes of conduct are always inherently puffery that investors cannot take seriously. Archetypal examples of puffery include "statements [that] are explicitly aspirational," "general statements about reputation, integrity, and compliance with ethical norms," "mere[] generalizations regarding [a company's] business practices," and generalized expressions of "optimis[m]." As with the general standard governing materiality, determining whether certain statements constitute puffery entails looking at "context," including the "specific[ity]" of the statements and whether the statements are "clearly designed to distinguish the company" to the investing public in some meaningful way. Finding that Signet's statements about its code of conduct were very specific and went well beyond vague generalizations, the court in *Signet* refused to dismiss the action.

Because gender issues involving corporate management have moved center stage, in recent years many companies have adopted codes of conduct prohibiting this kind of misconduct, and have discussed those codes in their securities filings and elsewhere. While that is certainly a step in the right direction, it is now clear that systematic violations of those codes can lead to securities claims.

It is concerning to note that Signet's egregious misconduct might never have become public, because the employees' complaints were forced into secret arbitration proceedings. It was only by chance that the claims came to light and were picked up by the *Washington Post.* Mandatory arbitration clauses, a common business practice requiring workers and customers to waive their right to sue the company in court, have kept sexual harassment complaints (such as those in the *Jock* action) hidden from the public.

For some time, Democrats have introduced bills to ban or limit arbitration clauses. There now appears to be some bipartisan agreement that such practice raises concerns. Republican Senator Lindsey Graham, the chair of the House Judiciary Committee, recently scheduled a hearing on the topic, saying "in 2019, I want to look long and hard on how the system works; are there any changes we can make?"

PLAINTIFFS' ATTORNEYS AND "BLOW PROVISIONS": AN UNEASY COEXISTENCE

By Louis C. Ludwig

During a settlement hearing on June 18 in the matter of *In re RH, Inc. Securities Litigation,* U.S. District Judge Yvonne Gonzalez Rogers of the Northern District of California took plaintiffs' *and* defendants' counsel to task for failing to disclose the existence of a confidential side deal between the parties. By all indications, the agreement in question related to a so-called "blow" or "blow-up" provision. Blow provisions provide settling defendants with an option to terminate the settlement agreement if a specified threshold of investors elect to exclude themselves (or "opt out") of the settlement. Opt-out thresholds can be pegged to the dollar amount of the defendants' potential exposure to opt outs, the percentage of the shares purchased by class members, the percentage of shares outstanding, or the percentage of shares traded. From a settling defendants' standpoint, the rationale is obvious: if too many class members opt out of the settlement, those same class members are likely to pursue their own cases against the defendants based on the same underlying conduct alleged in the class action. This makes the value of the class action settlement far less attractive to the defendants. No one wants to pay millions to settle a class action, only to be subjected to massive subsequent claims from investors who have opted out of the class. Where a defendant cannot sufficiently minimize its liability exposure in potential post-settlement "opt out" cases, settlement of the class action becomes a significantly less palatable proposition. The catch, as it were, is that the presence of an excessive number of opt-outs cannot and will not be known until the settlement has been inked, preliminarily approved by the court, and notice has gone out, making the blow provision a kind of insurance policy for defendants.

While the blow provision-related side deal in *RH* was referred to in the parties' settlement agreement, it went unmentioned in the motion for preliminary approval. In response to the omission, the judge ordered the parties to file the confidential agreement with the court under seal and advised both firms that she had informed the entire Northern District bench of the incident and of the firms' respective identities.

Given that the *RH* court characterized the settlement as a good deal for the class, counsels' decision to bury the confidential agreement, and thereby incur the court's ire, seems like a major unforced error. Certainly, failing to acknowledge the existence of a blow provision in preliminary approval motion is indefensible; indeed, plaintiffs' counsel in *RH* acknowledged their "poor job" of disclosing the agreement at the June 18 hearing. Courts have a duty to assess the fairness, reasonableness, and adequacy of proposed class action settlements, an objective that is thwarted where the settlement is presented in an incomplete or misleading manner. On the other hand, plaintiff's counsel was correct in noting that such agreements are "standard" in securities cases. Moreover, it is also quite common for the settling parties to request that blow provisions, which are typically memorialized in separate agreements like the one in *RH,* be subject to confidential treatment, *i.e.,* that they not be publicly disclosed, even to class members. However, the court itself needs to be informed of the provision.

On the surface, this type of secrecy seems antithetical to the informative aims of class action settlements: settlement proponents (plaintiffs and their counsel) are required to provide adequate notice of the settlement's material terms to the class; in turn, class members are able to make an informed decision on whether to remain part of, opt out of, or object to, the settlement. More generally, absent class members who are not class representatives, and are therefore not directly involved with the litigation, should be kept abreast of critical developments by the plaintiffs and counsel who seek to represent their interests. This is especially true in cases such as *RH,* where a class had already been certified prior to the parties' negotiating a settlement, thus creating, arguably, an even stronger presumption in favor of notice than in instances where a class is certified for the settlement purposes only. A previously-certified class has achieved a continuing and ongoing right to all material information about the case, making it difficult to advance the view that the blow provision's terms have no bearing on individual class members' decisions on how to proceed with respect to their claims, as has been argued in the settlement-only class certification context.

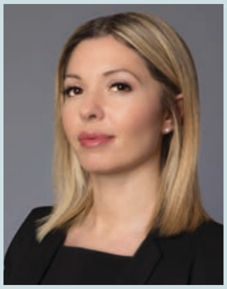
Still, there are good reasons for both plaintiffs and defendants to resist public dissemination of the details of the blow provisions. Most prominently, publishing the number or percentage of opt-outs necessary to "blow up" a settlement may give excessive leverage to opt-out activists and threaten the stability of the settlement. Specifically, a group of class members with knowledge of the terms of the blow provision (and holding the requisite number of shares to trigger it) could band together for the purpose of preventing the settlement, or simply extracting special concessions from the settlement proponents. Even if the group did not initially have enough shares to trigger the termination provision, it could seek to recruit enough additional class members to do so. In cases where the claimed damages per share differ significantly among class members, tying the opt-out threshold to a specified dollar value could serve to impede this type of opt-out activism by making it more difficult to assemble the right mix of class members to trigger the blow provision.

Some courts have found these concerns sufficiently persuasive to warrant non-disclosure of supplemental agreements containing the opt-out threshold. Such courts will typically permit counsel to submit the supplemental agreement to the court through confidential means, so that the court's mandate to review the settlement's fairness is not impeded. Other courts have required that the supplemental agreement be publicly filed, reasoning that class members are entitled to review all aspects of the deal, even where that entails the possibility of a concerted effort to upend the settlement. Regardless, it does not appear that counsel risk any prejudice by not filing supplemental agreements memorializing blow provisions so long as they (a) refer to the existence of any such agreement in their motion papers and (b) file a timely request for confidential review of the agreement, *e.g.,* a motion to file under seal. Alternately, the settling parties might elect simply to inform the court about the existence of the agreement and their non-intention to submit it in any form, confidential or otherwise, absent a specific order to do so. This course of action is not recommended, not only because it is likely to raise the court's suspicions about the content of the agreement, but also because the court is then forced to issue a request for information in order to carry out its duty to evaluate the settlement's fairness.

Of Counsel Louis C. Ludwig

Plaintiffs and their counsel have no real interest in ensuring that a blow provision or appurtenant side agreement be included as part of a settlement – it is inevitably a condition imposed by defendants for purposes of limiting their own exposure to future cases brought by opt-out class members. Nevertheless, these agreements have become standard practice. This is unsurprising in light of research demonstrating that the number of opt-outs – and the potential for separate opt-out litigation – has increased in recent years. Large class action settlements represent a disproportionate percentage of cases that ultimately face an opt-out: between 2012 and 2014, three of four settlements of $500 million or greater involved opt-outs. Consequently, members of the securities plaintiffs' bar must learn to effectively balance the informational risk posed by opt-out thresholds with both the notice due to class members and the court's independent obligation to fully review the terms of class-wide settlements.

NOTABLE DATES ON THE POMERANTZ HORIZON



Jennifer Pafiti

Jeremy A. Lieberman

Roxanna Talaie

J. Alexander Hood II

JEREMY LIEBERMAN and **ROXANNA TALAIE** will attend the NASRA 2019 Annual Conference in Williamsburg, Virginia, from August 3 to August 7.

JENNIFER PAFITI and **ROXANNA** will attend the TEXPERS 2019 Summer Educational Forum in Frisco, Texas, from August 17 to August 20.

ALEXANDER HOOD will attend the NCPERS Public Pension Funding Forum in New York, New York, from September 11 to 13.

JEREMY and **JENNIFER** will attend the CII Fall 2019 Conference, at which Jeremy will speak. The Conference will be held in Minneapolis, Minnesota from September 16 to September 18.

ROXANNA will attend the GAPPT 10th Annual Conference in Buford, Georgia, from September 16 to September 19, and the TLFFRA Conference in Amarillo, Texas, from September 29 to October 2.

THE

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IN ASSOCIATION WITH

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INVITES YOU TO THE 2020

CORPORATE GOVERNANCE ROUNDTABLE EVENT

SAVE THE DATE

JUNE 16, 2020

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.

For more information please contact us at: pomerantzroundtable2020@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
Pivotal Software, Inc.	PVTL	April 24, 2018 to June 4, 2019	August 19, 2019
Anheuser-Busch InBev SA/NV	BUD	March 1, 2018 to October 24, 2018	August 20, 2019
Eros International Plc	EROS	July 28, 2017 to June 5, 2019	August 20, 2019
Teva Pharmaceutical Industries Ltd.	TEVA	August 4, 2017 to May 10, 2019	August 23, 2019
EQT Corporation	EQT, RICE	June 19, 2017 to October 24, 2018	August 26, 2019
FedEx Corporation	FDX	September 19, 2017 to December 18, 2018	August 26, 2019
Sunlands Technology Group	STG	purchases pursuant to March 2018 IPO	August 26, 2019
Fred's Inc.	FRED	December 20, 2016 to June 28, 2017	August 27, 2019
Acer Therapeutics Inc.	ACER	September 25, 2017 to June 24, 2019	August 30, 2019
Diebold Nixdorf, Inc.	DBD	February 14, 2017 to July 4, 2017	September 3, 2019
CannTrust Holdings Inc.	TRST	November 14, 2018 to July 12, 2019	September 9, 2019
Helius Medical Technologies, Inc.	HSDT	November 9, 2017 to April 10, 2019	September 9, 2019
Intelligent Systems Corporation	INS	January 23, 2019 to May 29, 2019	September 9, 2019
Realogy Holdings Corp.	RLGY	February 24, 2017 to May 22, 2019	September 9, 2019
Verb Technology Company, Inc.	VERB	January 3, 2018 to May 2, 2018	September 9, 2019
Reckitt Benckiser Group plc	RBGLY	July 28, 2014 to April 9, 2019	September 13, 2019
Omnicell, Inc.	OMCL	October 25, 2018 to July 11, 2019	September 16, 2019
Ideanomics, Inc.	IDEX	May 15, 2017 to November 13, 2018	September 17, 2019
Netflix, Inc.	NFLX	April 17, 2019 to July 17, 2019	September 20, 2019
Eagle Bancorp, Inc.	EGBN	March 2, 2015 to July 17, 2019	September 23, 2019
Karyopharm Therapeutics Inc.	KPTI	March 2, 2017 to February 22, 2019	September 23, 2019
L Brands, Inc.	LB	May 31, 2018 to November 19, 2018	September 23, 2019
National General Holdings Corp.	NGHC	August 6, 2015 to August 9, 2017	September 23, 2019
Mallinckrodt public limited company	MNK	February 28, 2018 to July 16, 2019	September 24, 2019
3M Company	MMM	February 9, 2017 to May 28, 2019	September 27, 2019
Oasmia Pharmaceutical AB	OASM	October 23, 2015 to July 9, 2019	September 27, 2019
Aclaris Therapeutics, Inc.	ACRS	May 8, 2018 to June 20, 2019	September 30, 2019
GTT Communications, Inc.	GTT	February 26, 2018 to July 1, 2019	September 30, 2019
Just Energy Group Inc.	JE	November 9, 2017 to July 23, 2019	September 30, 2019
Venator Materials PLC	VNTR	August 2, 2017 to October 29, 2018	September 30, 2019

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
The Bank of New York Mellon ADR FX	$72,500,000	January 1, 1997 to January 17, 2019	August 15, 2019
FX Instruments (Canada) (Antitrust)	$1,385,838	January 1, 2003 to December 31, 2013	August 19, 2019
IZEA, Inc.	$1,200,000	May 15, 2015 to April 3, 2018	August 19, 2019
GoPro, Inc.	$6,750,000	September 19, 2016 to November 8, 2016	August 20, 2019
Fiat Chrysler Automobiles N.V.	$110,000,000	October 13, 2014 to May 23, 2017	August 28, 2019
Alibaba Group Holding Limited	$250,000,000	September 19, 2014 to January 28, 2015	September 3, 2019
McAfee, Inc.	$11,700,000	Shares tendered at $48 in August 2010 McAfee/Intel Merger	September 9, 2019
SanDisk Corporation	$50,000,000	October 16, 2014 to April 15, 2015	September 12, 2019
Taberna Capital Management, LLC (SEC)	$21,900,000	February 5, 2009 to February 6, 2017	September 12, 2019
JPMorgan Chase Bank, N.A. ADR FX	$9,500,000	November 21, 2010 to July 18, 2018	September 19, 2019
Diplomat Pharmacy, Inc.	$14,100,000	February 29, 2016 to November 3, 2016	September 23, 2019
Global Digital Solutions, Inc.	$595,000	October 8, 2013 to August 11, 2016	October 7, 2019
Americas Energy Company-AECo (SEC)	$4,315,640	September 9, 2009 to September 2, 2010	October 8, 2019
RH (Restoration Hardware)	$50,000,000	March 26, 2015 to June 8, 2016	October 8, 2019
Akers Biosciences, Inc.	$2,250,000	May 15, 2017 to June 5, 2018	October 9, 2019
Ooma, Inc.	$8,650,000	July 17, 2015 to January 14, 2016	October 14, 2019
Capstone Turbine Corporation	$5,550,000	June 12, 2014 to November 5, 2015	October 15, 2019
Liberator Medical Holdings, Inc.	$4,750,000	Shares tendered at $3.35 in Jan. 2016 Liberator/Barge Merger	October 22, 2019
Stemline Therapeutics, Inc.	$680,000	January 20, 2017 to February 1, 2017	October 23, 2019
Qurate Retail, Inc.	$5,750,000	August 5, 2015 to September 8, 2016	October 25, 2019
Transgenomic, Inc.	$1,950,000	April 12, 2017 to June 30, 2017	October 29, 2019
Roadrunner Transportation Systems, Inc.	$20,000,000	March 14, 2013 to January 30, 2018	November 7, 2019
Endo International plc	$50,000,000	re June 5, 2015 secondary public offering	November 14, 2019
Rentech, Inc.	$2,050,000	March 15, 2016 to April 6, 2017	November 26, 2019
SunEdison, Inc.	$74,000,000	September 3, 2015 to April 3, 2016	November 27, 2019
Baffinland Iron Mines Corporation	$4,852,830	September 22, 2010 to present	December 25, 2019

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We welcome input from our readers. If you have comments or suggestions about *The Pomerantz Monitor*, or would like more information about our firm, please visit our website at: wwww.pomerantzlaw.com or contact:

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