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# POMERANTZ ACHIEVES VICTORY FOR INVESTORS IN *ACADIA* CLASS ACTION

*By Tamar A. Weinrib*

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In an exciting victory for aggrieved Acadia investors, Judge Anthony J. Battaglia of the United States District Court for the Southern District of California issued an order on June 1, 2020 in *In re Acadia Pharmaceuticals Inc. Securities Litigation* granting in part and denying in part defendants' motion to dismiss. The decision marks a significant achievement for investors seeking to recover losses due to defendants' alleged fraud.

Acadia is an American biopharmaceutical company. In April 2016, its sole drug, NUPLAZID, received approval from the U.S. Food and Drug Administration (the "FDA") to treat hallucinations and delusions associated with Parkinson's disease-related psychosis ("PDP"). Plaintiff's complaint alleges that defendants issued misleading public statements regarding NUPLAZID and commercialization strategies for the drug, while failing to disclose that they paid lucrative kickbacks to doctors to incentivize them to prescribe NUPLAZID despite its disturbing safety profile.

Indeed, prior to NUPLAZID's FDA approval, the drug failed three of four clinical trials. Nevertheless, despite a scathing review of its safety by the FDA's lead reviewer, who recommended against approval, NUPLAZID did receive approval because—with only off-label alternatives available—the FDA concluded that it addressed "an unmet medical need."

Following its commercialization, and unbeknownst to investors, the adverse event reports started pouring in. Corrective disclosures regarding the mounting adverse events, the FDA's decision to reevaluate the drug, and the company's improper payments to doctors led to several significant drops in Acadia's stock price.

In late February 2018, after Acadia announced disappointing sales results for NUPLAZID, and again in early April 2018, after CNN reported on safety concerns over the drug, Acadia's stock price experienced single-day declines of 20% and 23.4% respectively. The CNN report stated that "[p]hysicians, medical researchers, and other experts told CNN that they worried that [NUPLAZID] had been approved too quickly, based on too little evidence that it was safe or effective. And given these mounting reports of deaths, they say that more needs to be done to assess NUPLAZID's true risks."

Shortly afterwards, in late April 2018, CNN reported that the FDA had decided to re-examine NUPLAZID's safety, leading Acadia's stock price to fall another 21.9%.

Then, on July 9, 2018, the Southern Investigative Reporting Foundation published a report entitled "Acadia Pharmaceuticals: This Is Not a Pharmaceuticals Company." The report stated that "evidence is mounting that something is horribly wrong with Acadia's sole drug, NUPLAZID, an antipsychotic for Parkinson's disease patients who experience episodic hallucinations and delusions" and that "Acadia has accomplished its growth in ways that have attracted intense regulatory scrutiny for other drug companies" including "dispensing wads of cash to doctors to incentivize prescription writing and downplaying mounting reports of patient deaths." On this news, Acadia's stock price fell another 6.8% on unusually heavy trading volume.

*Partner Tamar A. Weinrib*

In denying defendants' motion to dismiss, the Court held that their statements representing NUPLAZID as safe, detailing specific steps of Acadia's commercialization efforts, and touting patient satisfaction as well as rising prescription rates, all failed to disclose that (i) mounting reports of adverse events and deaths related to NUPLAZID post-commercialization raised the risk that the FDA would reconsider the drug's safety; (ii) as a result of NUPLAZID's deleterious safety profile and the availability of off-label alternatives, Acadia embarked on a campaign to pay off physicians to prescribe NUPLAZID; and (iii) these improper business practices raised a risk that Acadia would face regulatory scrutiny for potential violations of the Anti-Kickback Statute and Federal False Claims Act.

In so ruling, the Court rejected Acadia's truth-on-the-market defense because the supposedly public information had not been disclosed with sufficient intensity and also because that defense is inappropriate at this stage of litigation. The Court dismissed statements of literal truth (e.g., statements discussing net sales), statements deemed forward-looking (e.g., "we expect that usage should increase and that the number of patients on drug will likely build over time"), opinion statements (e.g., we are confident NUPLAZID over time should become the

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standard of care for patients with hallucinations and delusions associated with PDP"), and statements that the Court deemed corporate optimism (e.g., "as was the case with the field management group we hired in March 2015, this is truly an impressive group").

Indicative of the strength of the plaintiff's argument, the Court also found loss causation as to all the alleged stock drops and found scienter based on allegations that defendants had a legal obligation to track and report payments to physicians to the government, had access to the adverse event reports, focused heavily on NUPLAZID as the company's only drug, and that three members of Acadia's board resigned four days after NUPLAZID received FDA approval but prior to commercialization.

With this victory, the class action to recover losses suffered by Acadia investors due to the defendants' alleged fraud will continue to move forward.

**Tamar Weinrib is Lead Counsel for the Class in *In re Acadia Pharmaceuticals, Inc. Securities Litigation***

Attorney Omar Jafri

## SECOND CIRCUIT UPHOLDS CLASS CERTIFICATION ORDER IN *GOLDMAN SACHS*

*By Omar Jafri*

On April 7, 2020, the United States Court of Appeals for the Second Circuit affirmed the district court's order to certify a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure in *In re Goldman Sachs Grp. Inc. Sec. Litig.* This case arose out of four collateralized debt obligation ("CDO") transactions that were marketed by Goldman as ordinary asset-backed securities. Behind the scenes, however, Goldman allowed the hedge fund, Paulson & Co. ("Paulson"), to select risky mortgages that it knew would perform poorly or would otherwise fail. Goldman ultimately admitted that it failed to disclose Paulson's role in the CDOs, and paid a $550 million fine in connection with a settlement with the SEC.

Shareholders of Goldman alleged that it made false and misleading statements regarding (1) the procedures and controls utilized to identify or avoid conflicts of interest; (2) the effort made to comply with all applicable laws, rules and ethical principles; and (3) the alleged dedication to integrity and honesty in dealing with clients. In other words, the plaintiffs alleged that Goldman falsely represented that it was aligned with the interests of investors when, together with Paulson, it was profiting from short positions that conflicted with the interests of those very investors.

Numerous amicus briefs, including from parties routinely hostile to investors' rights such as the U.S Chamber of Commerce and the Securities Industry and Financial Markets Association, urged the Second Circuit to let Goldman off the hook based on the assumption that the district court held Goldman to an "impossible standard," and that allowing its decision to stand would open the floodgates for "abusive" securities lawsuits.

In upholding the district court's order to certify the class under Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Second Circuit rejected Goldman's attempt to limit the scope of the inflation-maintenance theory in securities fraud actions. Under the inflation-maintenance theory, otherwise known as the price impact theory, material misrepresentations are presumed to artificially maintain an already inflated price of stock. Goldman requested the Second Circuit to limit the inflation-maintenance theory to either "fraud-induced" appreciation of the stock price or "unduly optimistic" misrepresentations about "specific, material financial or operational information" or those that "falsely convey that the company has met market expectations about a specific, material financial metric, product, or event."

The full panel declined to narrow the scope of the inflation-maintenance theory on these grounds. The majority relied on the Second Circuit's decision in *In re Vivendi, S.A. Sec. Litig.* to observe that "[a]rtificial inflation is not necessarily fraud-induced, for a falsehood can exist in the market (and thereby cause artificial inflation) for reasons unrelated to fraudulent conduct." The dissent agreed that *Vivendi* was the law of the Circuit, and that "the district court did not misapply the inflation-maintenance theory of price impact." The majority further rejected Goldman's attempt to limit the inflation maintenance theory to a specific set of narrow circumstances such as misrepresentations about financial or operational information or specific metrics, products or events. Observing that none of the authorities that Goldman relied on supported such a limited application of the inflation-maintenance theory, the majority also rejected Goldman's argument that general statements cannot artificially maintain the price of a company's shares.

The majority construed Goldman's attempt to carve out "general statements" from the inflation-maintenance theory as a means to "smuggle" materiality into a certification inquiry even though long-standing precedent holds that materiality is not an appropriate consideration at the class certification stage and Goldman had, in fact, failed to convince the district court that the general statements at issue were immaterial as a matter of law at the pleading stage. Accordingly, the Second Circuit held that it is proper to infer that the company's stock price was inflated by the amount of the reduction in price following a disclosure of the falsity of the statements. That is all the law requires to demonstrate price impact in the Second Circuit.

The majority also affirmed the district court's ruling that Goldman had failed to rebut the *Basic* presumption. In a securities fraud action, a plaintiff is entitled to the *Basic* presumption if the defendants' misstatements are publicly known, the shares trade in an efficient market, and the plaintiff purchases the shares after the misrepresentations are made but before the truth is revealed. Once a plaintiff properly invokes the *Basic* presumption, defendants face a "heavy burden" to show, by a preponderance of the evidence, that the decline in stock price was entirely due to factors other than the alleged misrepresentations.

Goldman sought to rebut the *Basic* presumption by alleging that dozens of news articles published before the corrective disclosures revealed facts about its conflicts of interest but were not accompanied by a corresponding decline in its stock price. Goldman also presented expert testimony that the decline in its stock price was not due to the alleged misrepresentations, but was caused by the revelation of an SEC enforcement action, including a possible fine.

The majority affirmed the district court's conclusion that the absence of price movement following the release of the news articles was not sufficient to break the link between the alleged corrective disclosures and the subsequent price decline. This was so because the purported corrective disclosures, including the SEC's complaint against Goldman, contained newly revealed "hard evidence" in the form of damning emails and internal memoranda regarding Goldman's pervasive conflicts of interest, which was not revealed in the earlier news reports. The majority thus found no "clear error" in the district court's decision to weigh the evidence, upheld its conclusion that Goldman failed to rebut the *Basic* presumption, and affirmed the order to certify the class.

The majority's decision is consistent with the Second Circuit's decision in *Waggoner v. Barclays PLC*—a case where Pomerantz prevailed in convincing the Second Circuit to affirm the district court's decision to certify the class. In *Barclays*, the Second Circuit had similarly emphasized that defendants must present "direct, more salient evidence" to rebut the *Basic* presumption, and rejected the defendants' attempt to overcome the presumption via a more lenient standard.

One member of the panel dissented. While the dissent agreed with the basic contours of the price inflation theory, it disagreed with the majority's decision to uphold the certification order. According to the dissent, Goldman rebutted the *Basic* presumption based on "persuasive and uncontradicted evidence" that Goldman's share price did not decline after dozens of news reports allegedly revealed the nature of its conflicts of interest. The dissent further found that plaintiffs failed to refute Goldman's expert's conclusion that the decline in stock price was caused by the announcement of the SEC and DOJ enforcement actions rather than factual allegations contained in the complaint. However, the dissent did not explain why newly revealed "hard evidence," in the form of damning emails and internal memoranda regarding Goldman's pervasive conflicts of interest that was not revealed in the earlier news reports, was immaterial. The dissent would also have given courts the license to assess materiality at the class certification stage even though prior precedent holds that materiality is irrelevant at the class certification stage and defendants face an uphill battle to challenge materiality even at summary judgment.

In late June 2020, Goldman asked the Second Circuit to stay its mandate while it petitioned the Supreme Court to hear its appeal. ■

*Attorney Thomas H. Przybylowski*

## FIDUCIARY RESPONSIBILITY DURING COVID-19

*By Thomas H. Przybylowski*

The COVID-19 pandemic has significantly disrupted the financial and operational health of businesses across a variety of industries, with companies facing tremendous uncertainty in both their short-term and long-term planning. With companies left more vulnerable to both external and internal attacks, the fiduciary responsibility of their officers, directors, and all other executives to the companies and their shareholders is more important than ever.

On March 23, 2020, the Delaware Chancery Court released a transcript ruling in *K-Bar Holdings LLC v. Tile Shop Holdings, Inc.* that demonstrates that, even in times of great uncertainty, fiduciary duties may not be relaxed. Specifically, the Court found a colorable claim that the board of a publicly traded company breached its fiduciary duties by allowing a stockholder group, three of whom were board members, to take advantage of the company's trading price to increase the group's ownership percentage.

The conduct at issue in the case, which was brought by an unaffiliated stockholder, dates back to October of 2019, when the Tile Shop board of directors announced that the company would go dark, delist from the Nasdaq, and deregister from the SEC. While providing a brief background to the Court, plaintiff's counsel explained the significant impact of the company's announcement, stating that

> [i]mmediately after the announcement, the market price of the company's stock dropped about 60 percent and the board members began to purchase, and continue to purchase, the company's stock at a frenzied pace at depressed prices.

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> Since October 22nd to today, Your Honor, defendants Kamin and Jacullo have bought over 13 percent of the company and now defendants Rucker, Kamin, and Jacullo own about 42 percent of the company.
>
> One member of the board, Christopher Cook, immediately resigned from the board after the board approved the going dark. And the rest have done nothing since the approval to protect the company from the three insiders taking control.

Moreover, plaintiff's counsel explained that "since the going dark and the defendants buying up the shares, there's been no attempts to reach a standstill, from our understanding. There's been no poison pill put in place. Rather, they've been rushing to complete the going dark scheme."

The two primary fiduciary duties of officers and directors are that of (1) care, which requires them to make informed decisions in good faith and in the best interests of the company, and (2) loyalty, which requires them not to engage in self-dealing and to put the interests of the company ahead of their own. To determine whether officers and directors have performed in accordance with these duties, courts assess their conduct in the context of the business judgment rule, which is a rebuttable presumption that the officer or director acted in good faith and in the corporation's best interest. When applied, this presumption protects internal business decisions from external criticism.

> "MY EQUITABLE ANTENNA IS SET AQUIVER … MISCHIEF IS AFOOT."

The fiduciary duties of officers and directors persist regardless of whether the company is solvent, insolvent, or in the "zone of insolvency" (in which a company is only *approaching* insolvency). Indeed, while solvency dictates who may bring a claim against the company and whether such a claim may be direct or derivative, officers and directors owe the duties of care and loyalty to the company and shareholders until those duties are officially discharged. Finally, although recent Delaware case law has suggested that creditors can no longer bring derivative claims based on actions taken while a company was in the zone of insolvency, it is still difficult to determine exactly when a company has actually reached insolvency. Accordingly, creditors may still challenge decisions even when made in the zone of insolvency.

In the *Tile Shop* case, the Court ultimately directed the stockholder group to cease purchasing shares of the company, explaining that the threat of irreparable harm to the corporation and its shareholders was too great to allow any further purchases. In reaching this ruling, the Court stated multiple times that it believed there to be a colorable claim before it. Furthermore, the Court noted that, although a colorable claim simply means a claim that is nonfrivolous, "at the very least, the timing of the events is such that it would raise – well, my equitable antenna is set aquiver. When I look at the time frame, which doesn't prove anything, it just tells me, as I have already expressed, that there is a colorable claim here that mischief is afoot."

The ruling in *Tile Shop* provides good insight into the attitude courts have towards fiduciary duties. Indeed, the Court found that the board's simple *inaction* in allowing such an aggressive series of share purchases allowed for a colorable claim. Applying this ruling to the Covid-19 pandemic, *Tile Shop* should act as a reminder to officers and directors that they must be extra vigilant when a company is experiencing enhanced volatility. Accordingly, officers and directors should take measures to ensure that any decisions made are in compliance with their fiduciary obligations, such as:

- maintaining oversight of the company's results of operations and forward-looking strategy;
- increasing upward reporting from management;
- organizing more frequent board or committee meetings and keeping detailed and timely minutes;
- coordinating a task force specifically designed to address Covid-19 concerns;
- retaining experts to provide advice on matters such as operational viability, legal compliance, and governmental/regulatory updates; and
- monitoring the availability of transactions that could potentially enhance stockholder value.

Certainly, this list is not exhaustive. As *Tile Shop* demonstrated, courts conduct a factual analysis to determine whether, in the particular circumstances facing the company, officers and directors conducted themselves appropriately.

As such, what is most important is that that boards take actions that comply with their basic fiduciary obligations, fall within the business judgment rule, and protect the interests of the stockholders. Officers and directors should consult with their own counsel to determine the specific needs and interests of the company. Moreover, officers and directors must be mindful of the company's solvency, in order to assess the company's vulnerability to potential shareholder or creditor litigation. Boards must remember that market volatility and uncertainty can make companies especially vulnerable to attack. Ultimately, regardless of how these duties materialize, officers and directors must remember that their primary goal is to protect the shareholders. Finally, it is important to note that, although this article has primarily addressed the considerations of companies incorporated in Delaware, the utility of these suggestions can extend to LLCs, partnerships, or any other company facing the uncertainties of the COVID-19 pandemic.

# Q&A

## Jennifer Banner Sobers

Pomerantz attorney Jennifer Banner Sobers has already achieved a level of success that transcends her youth, having scored a $15 million settlement for the class in *In re Ubiquiti Networks, Inc. Sec. Litig.* earlier this year and earning recognition as a 2020 Rising Star from both Law360 and the *New York Law Journal*.

**What path brought you to the practice of securities litigation?**

**JBS:** I knew that I wanted to be a lawyer from a young age. After learning about Thurgood Marshall and the work of the NAACP in successfully litigating discrimination lawsuits, which was instrumental in securing justice and equal rights for African Americans, it was clear to me that law was an important and powerful profession. I wanted to play a part in securing justice for those who have been wronged.

After graduating from the University of Virginia law school, I worked at a top law firm on a variety of litigation matters including securities litigation, which I found fascinating. It is rewarding to work to protect investors' rights – many of whom are underrepresented. It is particularly challenging and rewarding to litigate securities cases at Pomerantz, where we often argue novel ideas and make critical case law.

**You were an integral member of the litigation team that in 2018 achieved the historic $3 billion settlement in *Petrobras.* Can you speak to that experience?**

**JBS:** I am proud to have been part of the *Petrobras* case, a securities class action that arose from a multi-billion-dollar kickback and bribery scheme involving Brazil's largest oil company. This was a highly watched case, reported in the news domestically and internationally, with breaking developments arising almost daily as the truth emerged.

The sheer magnitude of the case was remarkable – at one point there were at least 175 attorneys reviewing documents and providing support to the litigation team. The depth of discovery was of critical importance, and its thoroughness was a key contributing factor in reaching the excellent settlement achieved for the plaintiffs and the class. As the manager of all third-party discovery in the U.S., it was both a challenge and a thrill to research, subpoena and depose relevant entities, and to brief oppositions to motions to quash those subpoenas. And this was while overseeing the review of millions of documents, the vast majority of which were in Portuguese, and thousands more which were in Japanese. *Petrobras* truly was a historic case that gave the Pomerantz litigators the chance not only to prove their mastery of the law, but also to demonstrate their ability to manage litigation on a massive scale.

**In 2019 you were awarded membership in the National Black Lawyers Top 100. What does that recognition mean to you?**

**JBS:** The NBL hand-selects influential lawyers who have a reputation for providing excellent legal representation and are leaders in their respective practice areas. It was an honor to have been awarded membership because I have always taken the charge to be a zealous advocate to heart. As an African American female litigating plaintiff-side securities cases, I have personally crossed paths with at most a handful of African American junior and mid-level attorneys in my field and perhaps two others at the senior/partnership level. I hope that my successes so far serve to show other minorities that they, too, can succeed. Moreover, I am proud to share membership in the NBL with so many brilliant and successful African American attorneys, including Ted Wells, Jr. and Tracey Brown, who have blazed the trail for attorneys like me.

**Why is mentoring and supporting other women and minorities within and beyond the legal community important to you and how do you do so?**

**JBS:** I would not be where I am today without the support of so many people who took the time and effort to help me cultivate my talents and reach my potential – from my elementary school principal who gave my mother the name of a supplemental weekend and summer school program that I attended in Harlem, to the director of that program who encouraged me to pursue placement at a private junior high school that stressed the values of academic excellence, to the selection committee of the Ron Brown Scholar Program, which not only provided me with much needed scholarship money but which continues to provide support and encouragement today. By the grace of God, my parents, and my substantial network of supporters over the years, I am a success story.

Consequently, it is my responsibility to pay it forward. I love speaking with African American youth, either as the guest speaker at schools and churches or even just informally one-on-one, about the trajectory of my life, from growing up in the projects of Harlem to attending Harvard University and University of Virginia School of Law, to practicing at highly respected firms. I am also proud to have been a founder of the Let's Get Ready College Access program, which provides SAT preparation to high school students, guidance about college admissions and the financial aid process, and mentorship throughout college. Let's Get Ready has served more than 30,000 high school students from low-income circumstances.

**What are the issues facing securities litigation plaintiffs today?**

**JBS:** What is so fascinating about securities litigation, and, in particular, the kinds of cases Pomerantz pursues, is that it involves events that we see breaking in the news every day. Securities litigation is responsive to what is going on in the world, reacting to issues that affect us all, and, in many situations, requiring novel arguments that serve toward making precedents. For example, we recently filed cases against cruise lines and pharmaceutical companies related to alleged misbehavior arising from the COVID-19 pandemic. And we're involved in cases involving the #MeToo movement, including arguing that allegations involving a company's Code of Conduct or Ethics, once considered mere puffery, are material and should be actionable. As society changes and evolves, the plaintiffs' bar of securities lawyers will be there to hold companies accountable and ensure that investors' interests are protected.

**This year alone, you have been honored with two Rising Star awards. What are you most proud of accomplishing in your young career?**

**JBS:** I have put in a great deal of hard work - balancing time spent with my beautiful family as a mother, wife, and daughter with time spent providing the best legal work possible that our clients and investors deserve. I am proud that I have been blessed with the strength and fortitude to "do it all." Pomerantz has provided me with opportunities to hone my skills as a strong advocate, and I look forward to growing my practice with some of the most innovative and brilliant attorneys I have ever met.

While I believe the events of the last months involving the police killings of African Americans involve complicated matters that cannot be resolved overnight, I believe that each time someone like me from humble beginnings who has been blessed by the grace of God with success through hard work and sacrifice goes into a courtroom to deliver a successful argument, the more it becomes ingrained that African Americans have and continue to play an integral role in society. I am proud of my role in bringing about important societal change.

**Learn more about Jennifer in her bio on PomLaw.com and about her awards here and here.**

# POM SHORTS

## An Order for Gender Parity

U.S. District Judge James Donato of the U.S. District Court for the Northern District of California decided in favor of diversity and women's rights when he rejected a motion to appoint class counsel in an action against stock trading application Robinhood on the grounds that all the proposed lead counsel, executive committee members, and liaison counsel are men. Justice Donato approved a motion to consolidate 13 of the cases against Robinhood, but denied a motion to appoint attorneys from Kaplan Fox & Kilsheimer LLP and Cotchett Pitre & McCarthy LLP as co-lead counsel, stating that he was "concerned about a lack of diversity in the proposed lead counsel."

"Counsel with significant prior appointments are by no means disqualified from consideration here, but leadership roles should be made available to newer and less experienced lawyers, and the attorneys running this litigation should reflect the diversity of the proposed national class," Justice Donato said.

Robinhood, a mobile app launched in 2013, provides users with commission-free trades in stocks, funds, and options via a cloud-based platform that exists as a tech-savvy alternative to traditional in-person or by-phone financial services. With its lack of fees and quasi-outsider cachet, it quickly became a favorite of millennials.

On Monday March 2, 2020, the Dow Jones Industrial Average rose over 1,294 points, the S&P 500 rose 136 points, and the Nasdaq rose 384 points in what was the biggest-ever point gain in a single day. That day and the next, however, Robinhood's trading platform went offline, leaving many customers to watch helplessly on the sideline as the market rallied, without being able to participate in trading.

## Who Flushed?

The COVID-19 pandemic has upended many cherished traditions, not least of which is the pomp and circumstance that defines sessions of the United States Supreme Court. First occupied on October 7, 1935, the Supreme Court building was designed by New York architect Cass Gilbert in a neoclassical style based on a Roman temple. Grand in scale, yet quietly dignified – particularly when compared with the flamboyant Beaux-Arts style of its neighbor, the Library of Congress – the Supreme Court building embodies the authority and gravitas of the American justice system. According to the Architect of the Capitol's website, the building's plan "carefully and deliberately separated the justices' working areas from the public, ensuring privacy and quiet."

Chief Justice John Roberts has fervently sought to maintain the privacy envisioned in 1935 and to shield the Court's activities as much as possible from public view. He has resisted allowing cameras in the courtroom or livestreaming audio. He has said, "Television changes a lot...It has the potential of hurting the Court. ... We're the most transparent branch in government."

But these are not normal times. After initially postponing oral arguments in response to the pandemic, the Court began holding audio hearings in May, allowing the public to listen in live for the first time ever. On May 6, the Justices heard arguments in two cases: one about access to birth control, and the other about robocalls. The first case deserves a lengthy analysis and exegesis that are beyond the scope of the *Monitor.* The second, *Barr v. American Association of Political Consultants*, involves a challenge to the Telephone Consumer Protection Act's ban on robocalls from political groups. Plaintiffs argue that the law violates their constitutional rights to free speech under the First Amendment.

While Justice Elena Kagan was grilling the attorney for the political groups about the nature of the content of these phone calls, a toilet loudly flushed. One of the Justices had clearly answered the call of nature.

Many listeners were amused by the interruption and may even have felt it humanized the Justices. It triggered a series of jokes and investigations as to who flushed. It is likely, though, that the incident horrified the Chief Justice, as it both confirms and embodies (in an unfortunately literal sense) his fears about the consequences of media access.

We do not have high expectations that media access to Justice Roberts' Supreme Court will flourish once the pandemic ends.

# STANLEY M. GROSSMAN EARNS LIFETIME ACHIEVEMENT AWARD FROM THE *NEW YORK LAW JOURNAL*

*Senior Counsel Stanley M.Grossman*

**New York Law Journal**

The *New York Law Journal* has honored **Stanley M. Grossman** with a Lifetime Achievement Award.

Throughout five decades, Stan built a distinguished legal career fighting on behalf of injured investors. He has litigated landmark cases, shaping the law while recovering well over $1 billion for damaged investors.

Within his first year at Pomerantz in 1969, the young Stan appeared before the Supreme Court in *Ross v. Bernhard* and helped secure the right to a jury trial in derivatives actions for investors. In 1981, Stan served as plaintiff's lead trial counsel in *Gartenberg v. Merrill Lynch*, the first case ever tried under the newly enacted Section 36(b) of the Investment Company Act of 1940. The standard for fiduciary duty that he presented, now commonly referred to as "the Gartenberg standard," was later adopted by the Supreme Court. Stan led the litigation of *EBCI v. Goldman Sachs* that resulted in the seminal ruling that underwriters of IPOs owe fiduciary duties to investors. In 2008, Stan was back before the Supreme Court, presenting his argument in *Stoneridge Investment Partners v. Scientific-Atlanta*, one of the most important securities cases in a generation.

Over the course of a half century of service to the law, Stan Grossman has left his mark as one of the nation's most influential and respected securities litigators.

# 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 |
|---|---|---|---|
| Wells Fargo & Company | WFC | February 2, 2018 to May 5, 2020 | August 3, 2020 |
| Hebron Technology Co., Ltd. | HEBT | April 24, 2020 to June 3, 2020 | August 7, 2020 |
| Kandi Technologies Group, Inc. | KNDI | June 10, 2015 to March 13, 2017 | August 10, 2020 |
| Wells Fargo & Company | WFC | February 2, 2018 to March 10, 2020 | August 14, 2020 |
| Chembio Diagnostics, Inc. | CEMI | March 12, 2020 to June 16, 2020 | August 17, 2020 |
| Co-Diagnostics, Inc. | CODX | April 30, 2020 to May 15, 2020 | August 17, 2020 |
| Enphase Energy, Inc. | ENPH | February 26, 2019 to June 17, 2020 | August 17, 2020 |
| ProAssurance Corporation | PRA | April 26, 2019 to May 7, 2020 | August 17, 2020 |
| Casper Sleep Inc. | CSPR | Pursuant to February 2, 2020 IPO | August 18, 2020 |
| Endo International plc | ENDP | August 8, 2017 to June 10, 2020 | August 18, 2020 |
| United States Oil Fund, LP | USO | March 19, 2020 to April 28, 2020 | August 18, 2020 |
| Brookdale Senior Living Inc. | BKD | August 10, 2016 to April 29, 2020 | August 24, 2020 |
| PlayAGS, Inc. | AGS | August 2, 2018 to August 7, 2019 | August 24, 2020 |
| Cheetah Mobile Inc. | CMCM | March 25, 2019 to February 20, 2020 | August 25, 2020 |
| Mylan N.V. | MYL | February 16, 2016 to May 7, 2019 | August 25, 2020 |
| Ideanomics, Inc. | IDEX | March 20, 2020 to June 25, 2020 | August 27, 2020 |
| Kirkland Lake Gold Ltd. | KL | January 8, 2018 to November 25, 2019 | August 28, 2020 |
| Kingold Jewelry, Inc. | KGJI | March 15, 2018 to June 28, 2020 | August 31, 2020 |
| Pilgrim's Pride Corporation | PPC | February 9, 2017 to June 3, 2020 | September 4, 2020 |
| The GEO Group, Inc. | GEO | February 27, 2020 to June 16, 2020 | September 7, 2020 |
| J2 Global, Inc. | JCOM | October 5, 2015 to June 29, 2020 | September 8, 2020 |
| Wirecard AG | WCAGY | August 17, 2015 to June 24, 2020 | September 8, 2020 |
| Bayer Aktiengesellschaft | BAYRY | May 23, 2016 to March 19, 2019 | September 14, 2020 |
| Deutsche Bank Aktiengesellschaft | DB; DBK | November 7, 2017 to July 6, 2020 | September 14, 2020 |
| Verrica Pharmaceuticals, Inc. | VRCA | September 16, 2019 to June 29, 2020 | September 14, 2020 |
| McDermott International, Inc. | MDR; MDRIQ | September 20, 2019 to January 23, 2020 | September 16, 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 |
|---|---:|---|---|
| Liberator Medical Holdings, Inc. | $3,000,000 | Re January 21, 2016 merger | 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 | Re November 21, 2001 merger | 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 | Purchases pursuant to January 29, 2018 IPO | August 17, 2020 |
| Signet Jewelers Limited | $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 |
| Desarrolladora Homex a/k/a Homex Development Corp. | $300,000 | April 30, 2012 to May 5, 2016 | September 9, 2020 |
| USA Technologies, Inc. | $15,300,000 | August 22, 2017 to February 6, 2019 | September 10, 2020 |
| Insys Therapeutics, Inc. (Defendant Baker) | $2,000,000 | March 3, 2015 to January 25, 2016 | September 12, 2020 |
| General Electric Capital Corporation | $5,000,000 | Re December 1, 2015 merger | September 14, 2020 |
| Regulus Therapeutics Inc. | $900,000 | February 17, 2016 to June 11, 2017 | September 14, 2020 |
| Dr. Reddy's Laboratories Limited | $9,000,000 | November 27, 2014 to September 15, 2017 | September 22, 2020 |
| Spectrum Brands Holdings, Inc. | $9,000,000 | April 4, 2013 to March 5, 2018 | October 2, 2020 |
| BRF S.A. | $40,000,000 | April 4, 2013 to March 5, 2018 | October 3, 2020 |
| Lexmark International, Inc. | $12,000,000 | August 1, 2014 to July 20, 2015 | October 5, 2020 |
| Insys Therapeutics, Inc. (Defendant Kapoor) | TBD | March 3, 2015 to January 25, 2016 | October 10, 2020 |
| Centene Corporation | $7,500,000 | May 24, 2016 to July 25, 2016 | October 13, 2020 |
| Tezos Foundation | $25,000,000 | July 1, 2017 to July 13, 2017 | October 16, 2020 |
| Zimmer Biomet Holdings, Inc. | $50,000,000 | June 7, 2016 to November 7, 2016 | October 19, 2020 |
| Allied Nevada Gold Corp. | $14,000,000 | January 18, 2013 to August 5, 2013 | November 7, 2020 |
| LIBOR Eurodollar Futures (Antitrust) (Barclays) | $19,975,000 | January 1, 2003 to May 31, 2011 | December 1, 2020 |

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