the POMERANTZ MONITOR

VOLUME 12, ISSUE 5 SEPTEMBER/OCTOBER 2015

INSIDE THIS ISSUE

1 Leakage Theory is No Longer Just a Theory

2 Update: Another Go-Around For Loss Causation In The Ninth Circuit

3 District Court Upholds Our Claims Against Galena Biopharma

4 The Importance of Being Advanced

6 Notable Dates

7 PomTrack© Update

The Pomerantz Monitor may be considered to be attorney advertising under applicable rules of the State of New York

LEAKAGE THEORY IS NO LONGER JUST A THEORY

By Michael J. Wernke

It all started ten years ago with a question posed by Justice Stevens during oral arguments in *Dura Pharm., Inc. v. Broudo*: "What if the information leaks out and there's no specific one disclosure that does it all and the stock gradually declines over a period of six months?" Until last month, this question remained in the "what if" category of securities fraud jurisprudence. We now have an answer. In *Dura*, the Supreme Court held that a plaintiff in a securities fraud action must plead the element of loss causation, i.e. that the company's stock price declined once the truth was revealed through a corrective disclosure. At trial, the plaintiff must ultimately prove that the decline in stock price was a result of the fraud – not market, industry or company-specific non-fraud factors. Since *Dura*, courts have universally held that loss causation can be established even if the truth is revealed through multiple "partial" corrective disclosures that drove the stock price down.

Courts have also acknowledged that, in theory, a company's stock price could decline as a result of the truth "leaking" into the market without any actual disclosures of the fraud. For example, the stock price may move because insiders traded on the inside fraud-related information prior to a disclosure, or because investors gradually lost confidence in the company's previous misrepresentations even though the truth was not yet officially disclosed. However, in practice, courts have until now required plaintiffs to connect any decline in stock price to an identifiable "corrective" disclosure.

The Seventh Circuit's June 21, 2015 decision in *Glickenhaus & Co. v. Household International, Inc.* has lifted that restriction, creating the possibility that investors may recover losses resulting from the gradual decline in a company's stock price that is not directly connected to any corrective disclosure, but which can be attributed indirectly to the unraveling of the underlying fraud.

In *Household*, the defendants appealed to the Seventh Circuit a jury verdict finding them liable for securities fraud on the basis that the causation/damages model adopted by the jury failed to establish loss causation. The plaintiffs had presented two models to the jury. The first, a "Specific Disclosure Model," identified fourteen partial corrective disclosures that revealed the truth to the market and calculated the price declines that followed within the next day, removing price movements attributable to market and industry factors. This model determined that disclosure of the fraud led directly to investor losses of $7.97 per share. The second analysis, the "Leakage Model," attributed to the fraud all the price declines during the year-long period of partial disclosures, except for declines caused by market or industry factors. Using this model, plaintiffs calculated that losses per share were $23.94. The jury adopted the Leakage Model and damages were ultimately determined to be $2.46 billion.

Partner Michael J. Wernke

In their appeal, the defendants argued that the Leakage Model was flawed because it included price declines that did not immediately follow any of the partial disclosures of the fraud. While the Leakage Model eliminated market and industry factors, it did not identify and eliminate the effect of company-specific, nonfraud news on the stock price, which may have contributed to the decline in stock price during the periods between the fourteen partial corrective disclosures. Instead, plaintiff's expert testified in general terms that he considered the issue but was unable to conclude that non-fraud news would have altered the analysis. The question before the court was whether that was enough or whether the model itself must fully account for the possibility that company-specific, nonfraud factors affected the stock price.

The court refused to answer simply "yes" or "no," as doing so would create an unfair advantage for plaintiffs or defendants. Accepting the defendants' position would likely doom the leakage theory because it may be "very difficult, if not impossible," for any statistical model to separate damage caused by "leakage" from damage caused by release of company-specific news unrelated to the fraud. On the other hand, if it's enough for an expert to offer a conclusory opinion that no company-specific, nonfraud related information affected the stock price, then plaintiffs may be able to easily evade their burden of proving that the loss for which they seek recovery was a result only of the alleged fraud.

The court chose a middle ground, creating burden-shifting process to be used at trial. It held that if the plaintiffs'

Continued on page 2

Of Counsel, Michele S. Carino

Continued from page 1

expert testifies in a nonconclusory fashion that no company-specific, nonfraud related information contributed to the decline in stock price, then the burden shifts to the defendants to identify some significant, company-specific, nonfraud related information that could have affected the stock price. If the defendants can, then the burden shifts back to the plaintiffs to account for that specific information or provide a model that doesn't suffer from the same problem. Significantly, the court stated that one solution for the plaintiffs would be to simply exclude from the model's calculation any stock price movements directly related to the company-specific nonfraud information identified by the defendants.

While the defendants won the battle – the case was remanded to the trial court – investors may have won the war. Plaintiffs' recoveries in a securities fraud action are no longer limited to stock price declines immediately following specific disclosures of the fraud. Moreover, the Seventh Circuit provided a clear roadmap for the creation and use of a leakage model that can withstand judicial scrutiny (at least in the Seventh Circuit).

Notably, this decision came only a year after the Supreme Court's decision in *Halliburton II*, which dialed back the more rigid views of market efficiency which had previously been employed by many of the lower courts, and installed a similar burden-shifting process for that analysis. The Seventh Circuit's decision could be viewed as a road marker in a forming trend of courts taking a more practical view of how securities markets function and investors' burdens in proving their losses from frauds.

UPDATE: ANOTHER GO-AROUND FOR LOSS CAUSATION IN THE NINTH CIRCUIT

By Michele Carino

Ten years ago, in its seminal decision in *Dura Pharmaceuticals, Inc. v. Broudo*, the Supreme Court held that in a securities fraud *case* the plaintiffs must allege facts establishing "loss causation," meaning that the misrepresented or omitted facts actually caused losses for investors. This can occur, for example, when the company makes a "corrective disclosure" that reveals new or previously concealed information concerning the true state of the company's affairs, which then causes the price of its stock to drop.

Since then, there has been a great deal of discussion as to how to apply the *Dura* rule, especially in cases where there has not been a single, or obvious, corrective disclosure. Recently, the Ninth Circuit has been asked to provide some much-needed clarity in this area.

In August, in *Smilovits v. First Solar Inc.*, a federal district court in Arizona certified for immediate interlocutory appeal the issue of the correct standard to apply for pleading loss causation in cases where the company does not explicitly "correct" any previous disclosures – i.e. admit that they were false or misleading. In such cases, two conflicting standards have emerged in the Ninth Circuit post-*Dura*, which the district court concluded would yield contradictory results in the case before it. *First Solar* involves allegations that the defendants withheld information about certain manufacturing defects in their products. Eventually, those defects started to affect the company's financial condition, and its stock began to decline, falling from nearly $300 per share to less than $50 per share. Plaintiff identified six stock price declines following announcements of disappointing financial results. Although plaintiff claimed that the poor results were actually caused by these undisclosed manufacturing defects, the company did not admit it.

Applying the test articulated in *Nuveen Mun. High Income Opportunity Fund v. City of Alameda*, plaintiff contended that loss causation is satisfied "by showing that the defendant misrepresented or omitted the very facts that were a substantial factor in causing the plaintiff's economic loss." On the other hand, defendants urged the court to adopt a much narrower view, which would require not only that the misrepresented or omitted facts caused the loss, but that the company admitted that its previous statements were wrong.

In support of this argument, defendants relied on another line of Ninth Circuit *case* law beginning with *Metzler Investment GMBH v. Corinthian Colleges, Inc.* The *Metzler* line of cases requires a showing that "the market learn[ed] of a defendant's fraudulent act or practice, the market react[ed] to the fraudulent act or practice, and plaintiff suffer[ed] a loss as a result of the market's reaction." According to defendants, since First Solar's poor earnings announcements were not accompanied by any revelation of a prior fraud, plaintiff could not demonstrate the requisite "causal connection" between defendants' alleged misrepresentation or omission and plaintiff's loss.

The district court ultimately determined that *Nuveen* stated the better rule, holding that the requirements of proximate cause are satisfied so long as the misrepresented fact led to the plaintiff's loss. Thus, it does not matter whether the company reveals that it has committed a fraud. As the district court explained: "If the plaintiff can prove that the drop in revenue was caused by the misrepresented fact and that the drop in his or her stock value was due to the disappointing revenues, the plaintiff should be able to recover. A causal connection between the 'very fact' misrepresented and the plaintiff's loss has been established."

An affirmance in *First Solar* by the Ninth Circuit potentially would have far-reaching implications, because it would prevent companies from averting liability simply by refusing to admit that misstatements had been made. It might

also put an end to the ongoing dispute over whether the announcement of governmental investigation, followed by a drop in a company's stock price, satisfies the loss causation test under *Dura*. The Ninth Circuit has adopted the reasoning in *Loos v. Immersion*, which like *Metzler*, holds that disclosure of an investigation is insufficient to establish loss causation, because "[t]he announcement of an investigation does not 'reveal' fraudulent practices to the market," but only the possibility that a fraud may have occurred. *Loos* requires something "more" – presumably, some revelation or actual accusation of fraud. However, as the *First Solar* court recognized, application of *Nuveen* in cases like *Loos* yields a completely different outcome, so long as plaintiffs establish that the 'very fact' misrepresented, e.g., the undisclosed fraudulent conduct prompting the investigation, caused the stock to decline in value.

Attorney Jennifer Banner Sobers

The *First Solar* approach also makes eminent sense as a policy matter. Requiring revelation of fraud before losses are actionable rewards defendants who issue bare bones disclosures or time the announcement of poor financial results to coincide with other events, even though they may have knowledge of the real causes of the company's difficulties. When and if an actual fraud is revealed, there may be no subsequent price decline, as the market has already incorporated and accounted for the previously-disclosed bad news, and therefore, there is no actionable corrective disclosure. Thus, defendants who succeed at concealing fraud are most likely to be insulated from liability. That is the exact opposite result sought to be achieved by the federal securities laws. We will have to wait to see if the Ninth Circuit agrees.

DISTRICT COURT UPHOLDS OUR CLAIMS AGAINST GALENA BIOPHARMA

By Jennifer Banner Sobers

In August, Pomerantz won an important victory for investors against Galena Biopharma, certain of its officers and directors, and others when the district court of Oregon largely rejected defendants' motion to dismiss the action.

The complaint alleges that defendants manipulated the market price of Galena stock when Galena hired DreamTeam, a promotional consulting company, to publish bullish articles to inflate Galena's stock. According to the complaint, DreamTeam published articles on websites touting Galena and falsely claiming that the articles were written by established, credible investment professionals, whereas in fact the articles were paid promotions using a variety of aliases for the "authors". Investors reading the many varied web and social media positive postings about Galena could conceivably be convinced that they should invest in the company. While Galena stock was being pumped up, Galena's officers dumped large amounts of company stock, reaping enormous profits. In short, this was a classic "pump and dump" scheme.

Defendants' motion to dismiss relied primarily on the argument that under a recent Supreme Court case, *Janus Cap. Grp. Inc. v. First Derivative Traders*, only the "maker" of a statement can be held liable for alleged misrepresentations and omissions in violation of the securities laws. Here, they claimed, only the individual authors of the articles hired by the third party stock promoters were "makers" of these statements In response, we argued that, under *Janus*, the maker of a statement is not just the person identified as the author, but the person or entity with ultimate authority over the content and communication of the statement. Since Galena officers had final authority over the articles and had to approve the content before they were published, Galena and its officers were the "makers" of the allegedly false statements.

The District Court agreed with us and refused to extend the holding of *Janus* to say that only the individual authors were "makers" of the statements. The Court noted that if it were to consider the individual authors as the makers of those statements, then companies could avoid liability under the securities laws by paying third parties to write and publish false or misleading statements about the company, even when the company retains final decision-making authority over content.

Defendants also argued that the articles were written by and attributed to the individual authors, and under *Janus*, the attribution within the articles serves to prove that the authors are the "makers" of the statements. The District Court did not agree. The Supreme Court in *Janus* noted that in the "ordinary case" attribution within a statement

Continued on page 4

Continued from page 3

is strong evidence that the statement was made by the party to whom it is attributed. However, the District Court found that this case is not ordinary and attributions under false aliases like "Kingmaker" and "Wonderful Wizard" are meaningless, as no reasonable reader would believe that the statements were made by people with those names. Moreover, the purported biographies associated with the author aliases were allegedly false. Thus, the District Court found that the attribution was not strong evidence that the false aliases were the "makers" of statements contained in the articles.

However, the District Court did hold that Galena, as the only party that had ultimate authority over the published articles, was the maker of these statements, and not also the DreamTeam as we argued. The Court noted that the lesson of Janus is that where legally distinct entities are involved, only one entity has the final say in what, if anything, is published.

Partner Gustavo F. Bruckner

Defendants' motion to dismiss also invoked the so-called "truth on the market defense," arguing that defendants' alleged misstatements could not have been material because corrective information was already disclosed to the market. This "corrective" information was supposedly revealed by an obscure website, which disclosed that one of thestock promoters touting the company was receiving compensation from Galena.

The District Court rejected that argument, holding that it is not reasonable for investors to have to research every stock promotion-related website to make sure that each company recommended by purportedly independent analysts and investors has not hired a promotional firm to engage in secret stock promotions. Moreover, as alleged in the complaint, further evidence that the paid promotional campaign was not already incorporated into Galena's stock price was that after articles revealing the fraudulent scheme were published, the company's stock price dropped significantly. Defendants in securities cases often attempt to rebut materiality allegations by showing that corrective information was published on some obscure website or in an article that is not widely circulated. Thus, the District Court's finding on this point is an important victory for investors.

THE IMPORTANCE OF BEING ADVANCED

By Gustavo F. Bruckner

Delaware is the state of incorporation for over 50% of all publicly traded corporations in the United States and 60% of the Fortune 500 companies. Delaware court decisions on issues of corporate law thus have far-reaching ramifications. A series of cases involving the rights of corporate directors for advancement and indemnification of legal fees shows just how important these rights are considered, even when they involve corporate wrongdoers. When a director is sued for his actions as a director, he may be entitled not only to be reimbursed for his defense costs after the case is over, but to have these costs paid immediately, even before there is a determination as to whether the case has merit and before it is decided whether or not he should be indemnified.

Although a seat on a corporate Board of Directors can be prestigious and often lucrative, it carries with it certain risks -- including the risk of liability for breaching fiduciary duties. Yet, because directors are not usually executives, they don't always have the same level of involvement and awareness of the affairs of a company that day-to-day management has. Generally, the Business Judgment Rule protects a director from personal liability to the corporation and its stockholders for an unwise corporate decision so long as the director acted in good faith, was reasonably informed and believed the action taken was in the best interests of the corporation. Delaware General Corporation Law section 145 provides that corporations shall indemnify officers and directors (that is, pick up their defense costs incurred in successfully defending claims of corporate governance breaches). The Delaware courts have previously held that "the statute requires a corporation to indemnify a person who was made a party to a proceeding by reason of his service to the corporation and has achieved success on the merits or otherwise in that proceeding [mandatory indemnification]. At the other end of the spectrum, the statute prohibits a corporation from indemnifying a corporate official who was not successful in the underlying proceeding and has acted, essentially, in bad faith." In between, a corporation has the flexibility to indemnify its officers and directors, if they acted in good faith and without a reasonable belief that their conduct was criminal (permissive indemnification).

Since these costs cannot be determined until after the case is over, Delaware has also allowed corporations to agree to advance defense costs to officers and directors who find themselves defendants in such cases. This is seen as a way to attract top talent otherwise frightened of potential litigation. The advancement is usually subject to an "undertaking" by the director to repay any advancement if the director is ultimately not found to be entitled to indemnification. The law allows a corporation more latitude to provide advancement to current officers, but allows more conditions to be

imposed on the benefit granted to former directors and officers, thus making an important distinction between current and former officers.

In Holley v. Nipro Diagnostics, Inc., the Delaware Chancery Court affirmed last year how seriously it takes these obligations to advance defense costs. Holley was the founder and Chairman of a medical device manufacturer, Home Diagnostics, that was acquired by Nipro in 2010. Pursuant to the acquisition, Nipro assumed Home Diagnostics' advancement obligations to Holley "to the maximum extent permitted under the General Corporate Law of Delaware" for the costs of defending claims asserted against Holley "by reason of the fact" that he was a director of the Company. Soon after the merger closed, the SEC began an investigation into insider trading and initiated a civil enforcement action against Holley for disclosing non-public information to friends and family. Holley sought and received advancement of defense costs related to the SEC investigation. A month later, Holley was indicted on charges of criminal securities fraud. The SEC civil action was stayed pending resolution of the criminal action. After successfully getting the court to dismiss two of the criminal counts, Holley pled guilty to two additional counts and in exchange the government agreed to dismiss the three remaining counts. Thereafter the SEC civil enforcement action resumed and Holley sought advancement of his costs of defending that action. When Nipro refused, Holley brought suit.

Nipro argued that Holley was not entitled to advancement for the following reasons: he was not a party to the SEC enforcement action "by reason of the fact" that he was a director, but rather due to personal misconduct; since he pled guilty to insider trading he could not be indemnified and thus advancement would not be permissible; and public policy grounds. The Court rejected Nipro's arguments. First, the Court found that the SEC investigation focused on the breadth and depth of inside information Holley possessed as a result of his position. The Court also held that "in advancement cases, the line between being sued in one's personal capacity and one's corporate capacity generally is drawn in favor of advancement with disputes as to the ultimate entitlement to retain advanced funds being resolved later at the indemnification stage." The Court made clear that the right to advancement is separate and apart from the right to indemnification, with the right to advancement not dependent on the right to indemnification. Nevertheless, the Court held that notwithstanding the guilty plea, Holley might be entitled to indemnification since the guilty plea did not necessarily preclude success on the SEC claims, which alleged misconduct beyond that encompassed in his guilty plea. The Court rejected the public policy arguments on the same grounds. To emphasize the importance of this issue, the Court also awarded Holley the fees incurred in litigating his advancement claims.

A few months later the Chancery Court once again reached the same conclusion in *Blankenship v. Alpha Appalachia Holdings, Inc.* Blankenship was CEO and Chairman of Massey Energy Company when a massive explosion at one of Massey's mines killed twenty-nine miners. Blankenship retired soon thereafter and Massey was acquired by Alpha Natural Resources. As part of the merger, Massey asked Blankenship to sign a new undertaking which added language that Massey's advancement of expenses was contingent upon Blankenship's representation that he "had no reasonable cause to believe that his conduct was ever unlawful." After the merger, Blankenship incurred legal expenses, which Massey paid, arising out of the government's investigation of the mine explosion. When the government later criminally indicted Blankenship, Massey and Alpha determined that Blankenship breached his undertaking and ceased advancing the costs of his defense. Blankenship brought suit and, in a post-trial opinion, the Court found in his favor. Emphasizing the importance of advancement, the first sentence of the opinion states, "this advancement action involves some unusual facts but an all too common scenario: the termination of mandatory advancement to a former director and officer when trial is approaching and it is needed most." The Court went on to find that the revised undertaking could not justify terminating advancement in the middle of Blankenship's defense. Massey's advancement obligations to Blankenship under its charter survived Alpha's acquisition of Massey under the terms of the Merger Agreement between those parties. Because Massey's charter required it to advance costs to the maximum extent provided by Delaware law, Massey could not then condition its advancement obligations on anything other than an undertaking to repay the expenses if it is later determined that indemnification is not appropriate. The Court also awarded Blankenship his reasonable expenses incurred in litigating the advancement action. These results comport with a spate of cases since *Holley* involving claims for advancement that have ended with similar results.

Most recently the court did find there are limits to advancement, in two cases over two consecutive weeks. In *Lieberman v. Electrolytic Ozone*, the Chancery court found that post-employment conduct did not entitle former officers to advancement. Lieberman and Lutz were the CEO and VP Engineering, respectively, of Electrolytic Ozone. They had signed non-disclosure and non-compete agreements. In December 2013 they were terminated as part of a consolidation of operations. Electrolytic also terminated a 10-year supply contract with Franke Foodservice Systems two years into the contract. Franke initiated arbitration against Electrolytic for breach of the supply agreement. Lieberman and Lutz went to work for Franke in February 2014. In June 2014, Electrolytic raised third-party claims against Lieberman and Lutz for breach of their employment, non-disclosure and non-compete agreements.

Continued on page 6

Continued from page 5

Lieberman and Lutz brought suit after Electrolytic refused to provide them advancement. The Court held that Lieberman and Lutz could only be entitled to advancement of fees for litigation brought "by reason of the fact" that they served as EOI directors, officers or employees. Although the Court said the test is broadly construed, it found that the "arbitration claims are confined to post-termination actions and do not depend on [Lieberman and Lutz's] use of corporate authority or position." The Court went on to note that Electrolytic's contractual claims were derived from specific contractual obligations that were allegedly breached post-termination. Thus Lieberman and Lutz were not entitled to advancement.

In *Charney v. American Apparel, Inc.*, the Court held that the permissive indemnification written into a post-employment standstill agreement was not as broad as the indemnification granted under the law. Charney, founder and former CEO/chairman of American Apparel, was forced out of the company after revelations of sexual harassment and initiation of lawsuits emanating from such allegations. He was suspended as the company's chief executive officer in June 2014, resigned as a director of the company in July 2014 and was terminated for cause as CEO in December 2014. Thereafter, the company brought suit against Charney, alleging that after he was no longer CEO he violated the nomination, standstill and support agreement under which he agreed to not disparage the company or to run a proxy contest for the company's board of directors. Charney sought advancement of his legal expenses in defending against the case under an indemnification agreement he had with American Apparel, which mandates the advancement of legal costs "related to the fact" that Charney was a director or officer of the company.

The Court concluded that these claims did not involve any alleged "use or abuse of corporate power as a fiduciary of American Apparel," and thus Charney could not be entitled to indemnification under the terms of the contract. Additionally, the company's charter only mandates advancement for current officers and directors. Therefore, the Court found that Charney could not receive advancement.

However, the facts in *Charney* and *Lieberma*n differ from most advancement cases in that the questionable conduct occurred when those seeking advancement were no longer directly employed by the company. In contrast, Blankenship sought advancement when he was no longer employed by the company but it was to defend conduct that occurred while he was still employed. And as *Holley v. Nipro* shows, even criminal behavior may not be sufficient to preclude advancement.

NOTABLE DATES ON THE POMERANTZ HORIZON

Jeremy A. Lieberman

Marc I. Gross

Jennifer Pafiti

Jayne Arnold Goldstein

Mark B. Goldstein

JEREMY LIEBERMAN and **JENNIFER PAFITI** will attend the **CII Conference** in Boston from **September 30-October 2**, where they will speak to a group of institutional investors on Pomerantz's Petrobras securities litigation. **MR. LIEBERMAN** will also speak on "Securities Class Actions, Implications for EU Investors" at a **Pomerantz-sponsored seminar** on **November 3** in Paris.

JENNIFER PAFITI will also attend the **NAPF Annual Conference & Exhibition** in Manchester, UK from **October 14-16**; the **IFEBP's 61st Annual Employee Benefits Conference** in Honolulu from **November 8-11**; the **48th Annual Canadian Employee Benefits Conference** in Las Vegas from **November 22-25**, and the **Local Authority Pension Fund Forum 20th Annual Conference** in Bournemouth, UK from **December 3-5**.

JAYNE GOLDSTEIN will speak at the **IPPFA MidAmerican Pension Conference** in Lake Geneva, Wisconsin on **October 8, 2015** on "Update on Securities Litigation." **MARK GOLDSTEIN** will also attend the conference.

MARC GROSS will speak at the **ILEP Conference** on: **The 20th Anniversary of the Private Securities Litigation Reform Act: Taking Stock,** at **Loyola University** in Chicago on **October 16, 2015**.

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
Helix Energy Solutions Group, Inc.	HLX	October 21, 2014 to July 21, 2015	September 29, 2015
MDC Partners Inc.	MDCA	September 24, 2013 to April 27, 2015	September 29, 2015
Investment Technology Group, Inc. (S.D.N.Y)	ITG	February 28, 2011 to August 3, 2015	October 5, 2015
On Deck Capital, Inc.	ONDK		October 5, 2015
Whole Foods Market, Inc.	WFM	August 9, 2013 to July 30, 2015	October 5, 2015
Constant Contact, Inc.	CTCT	October 23, 2014 to July 23, 2015	October 6, 2015
TriNet Group, Inc.	TNET	May 5, 2014 to August 3, 2015	October 6, 2015
Abengoa, S.A.	ABGB	October 17, 2013 to August 2, 2015	October 9, 2015
Broadcom Corporation (2015) (C.D. Cal.)	BRCM		October 13, 2015
Plains All American Pipeline, L.P. (2015)	PAA	February 27, 2013 to August 4, 2015	October 16, 2015
Biogen Inc. (2015)	BIIB	January 29, 2015 to July 23, 2015	October 19, 2015
AAC Holdings, Inc.	AAC	October 2, 2014 to August 3, 2015	October 23, 2015
El Pollo Loco Holdings, Inc.	LOCO	May 15, 2015 to August 13, 2015	October 23, 2015
CaesarStone Sdot-Yam, Ltd.	CSTE	March 25, 2013 to August 18, 2015	October 26, 2015
Northwest Biotherapeutics, Inc. (D. Md.) (2015)	NWBO	March 8, 2013 to August 20, 2015	October 26, 2015
Pier 1 Imports, Inc. (2015)	PIR	December 19, 2013 to February 10, 2015	October 26, 2015
The Spectranetics Corporation (2015)	SPNC	February 19, 2015 to July 23, 2015	October 26, 2015
MaxPoint Interactive, Inc.	MXPT		October 30, 2015
ConforMIS, Inc.	CFMS	July 1, 2015 to August 28, 2015	November 2, 2015
Wayfair Inc.	W	October 2, 2014 to August 31, 2015	November 2, 2015
Super Micro Computer, Inc.	SMCI	September 15, 2014 to August 31, 2015	November 3, 2015
Resource Capital Corp.	RSO	March 2, 2015 to August 4, 2015	November 9, 2015
Cellceutix Corporation	CTIX	May 10, 2013 to August 6, 2015	November 10, 2015
Fiat Chrysler Automobiles N.V.	FCAU	August 1, 2014 to July 24, 2015	November 10, 2015
Marvell Technology Group Ltd. (2015)	MRVL	November 20, 2014 to September 10, 2015	November 10, 2015
SFX Entertainment, Inc. (2015) (S.D.N.Y.)	SFXE	February 25, 2015 to August 17, 2015	November 10, 2015
Liquid Holdings Group, Inc.	LIQD	July 26, 2013 to December 23, 2014	November 20, 2015
Shiloh Industries, Inc.	SHLO	March 9, 2015 to September 14, 2015	November 20, 2015
Sientra, Inc.	SIEN	March 18, 2015 to September 24, 2015	November 24, 2015
Volkswagen AG	VLKAY, VLKPY	November 19, 2010 to September 21, 2015	November 24, 2015
QLogic Corporation	QLGC	April 30, 2015 to July 30, 2015	November 27, 2015

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
Great Lakes Dredge & Dock Corporation	$1,955,000	August 7, 2012 to August 7, 2013	September 30, 2015
China MediaExpress Holdings, Inc.	$12,000,000	April 1, 2010 to March 11, 2011	October 2, 2015
Smithtown Bancorp, Inc.	$1,950,000	March 13, 2008 to February 1, 2010	October 5, 2015
Facebook, Inc.	$26,500,000		October 7, 2015
Hot Topic, Inc.	$14,900,000		October 12, 2015
Axesstel, Inc.	$1,250,000	February 28, 2013 to October 17, 2013	October 19, 2015
Insys Therapeutics, Inc.	$6,125,000	November 12, 2013 to May 14, 2014	October 28, 2015
Hewlett-Packard Company	$100,000,000	August 19, 2011 to November 20, 2012	October 31, 2015
Delcath Systems, Inc.	$8,500,000	April 21, 2010 to May 2, 2013	November 6, 2015
Feihe International, Inc.	$6,500,000	October 3, 2012 to June 28, 2013	November 6, 2015
Chicago Board of Trade	$625,000	July 8, 2008 to July 15, 2008	November 9, 2015
SinoHub, Inc.	$600,000	May 17, 2010 to August 21, 2012	November 9, 2015
Longtop Financial Technologies Ltd.	$2,300,000	February 21, 2008 to May 17, 2011	November 10, 2015
TS Multi-Strategy Fund, LP	$3,500,000		November 23, 2015
IntraLinks Holdings, Inc.	$14,000,000	February 17, 2011 to November 11, 2011	November 30, 2015
Overseas Shipholding Group, Inc.	$31,250,000	October 29, 2007 to October 19, 2012	December 2, 2015
MF Global Holdings Ltd. (Individual Def's; PWC)	$129,500,000	May 20, 2010 to November 21, 2011	December 3, 2015
Weatherford International Ltd.	$120,000,000	March 2, 2011 to July 24, 2012	December 9, 2015
The Bank of New York Mellon Corporation	$180,000,000	February 28, 2008 to October 4, 2011	December 11, 2015
J.P. Morgan Acceptance Corp. I	$388,000,000		December 16, 2015
Impax Laboratories, Inc.	$4,750,000	March 6, 2013 to August 1, 2014	December 19, 2015
Invacare Corporation	$11,000,000	February 27, 2009 to December 7, 2011	December 22, 2015
Kinder Morgan Energy Partners, L.P.	$27,500,000	February 5, 2011 to November 26, 2014	December 26, 2015
Bernard L. Madoff Investment Securities LLC (Citco Def's)	$125,000,000	March 1, 2010 to December 17, 2013	December 28, 2015
Tower Group International, Ltd. (Tower Def's)	$20,500,000	March 1, 2010 to December 17, 2013	December 28, 2015
China Ceramics Co., Ltd.	$850,000	March 30, 2012 to May 1, 2014	December 30, 2015
OSI Systems, Inc.	$15,000,000	January 24, 2012 to December 6, 2013	January 15, 2016
Avon Products, Inc. '	$62,000,000	July 31, 2006 to October 26, 2011	January 19, 2016

THE POMERANTZ MONITOR
A BI-MONTHLY PUBLICATION OF POMERANTZ LLP
600 Third Avenue, New York, NY 10016

PRST STD
U.S. POSTAGE
PAID
New York, NY
Permit NO. 757

POMERANTZ LLP

THE LAW FIRM THAT INSTITUTIONAL INVESTORS TRUST FOR SECURITIES MONITORING AND LITIGATION

Pomerantz is acknowledged as one of the premier firms in the areas of corporate, securities, antitrust, mergers and acquisitions, and insurance litigation. Founded by the late Abraham L. Pomerantz, known as the 'dean of the class action bar,' the firm pioneered the field of securities class actions. For more than 79 years, Pomerantz has continued the tradition that Abe Pomerantz established, fighting for the rights of victims of securities fraud, breaches of fiduciary duty, and corporate misconduct. Prior results, however, do not guarantee a similar outcome in future cases.

NEW YORK
600 Third Avenue, New York, NY 10016 Tel: 212.661.1100 Fax: 212.661.8665

CHICAGO
10 South Salle Street, Suite 3505, Chicago, IL 60603 Tel: 312.377.1181 Fax: 312.377.1184

LOS ANGELES
468 North Camden Drive, Beverly Hills, CA 90210 Phone: 310.600.9775 Fax: 310.285.5330

WESTON, FL
1792 Bell Tower Lane, Suite 203, Weston, FL 33326 Tel: 954.315.3454 Fax: 954.315.3455

CONTACT US:

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:

Jennifer Pafiti, Esq.
jpafiti@pomlaw.com 310.600.9775

Jeremy A. Lieberman, Esq.
jalieberman@pomlaw.com 212.661.1100