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DECISION CERTIFYING CLASS IN *PETROBRAS* CASE HEADS TO SECOND CIRCUIT

By John A. Kehoe

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As the *Monitor* has previously reported, the court has appointed Pomerantz as lead counsel for a class of purchasers in the U.S. of securities issued by Petrobras, a Brazilian corporation engulfed in a massive corruption scandal. We were retained in this case, which is pending in the Southern District of New York, by lead plaintiff in the action, Universities Superannuation Scheme Ltd., and by a U.S. state retirement plan. Plaintiffs allege that the fraud that pervaded Petrobras artificially inflated the price of Petrobras securities by billions of dollars, while in the process hobbling the political and economic structure of Brazil, one of the world's largest economies.

In February, Judge Rakoff certified a class of purchasers of Petrobras securities on a U.S. exchange or through other domestic transactions between January 22, 2010 and July 28, 2015 for claims arising under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. In addition, for claims asserted under Sections 11 and 12(a)(2) of the Securities Act of 1933, Judge Rakoff certified a class of purchasers of Petrobras debt securities in U.S. domestic transactions in/or traceable to public offerings that Petrobras conducted on May 15, 2013 and March 11, 2014.

The classes were limited to investors who engaged in securities transactions in the U.S. because of the Supreme Court's decision several years ago in a case called *Morrison v. Nat'l Australia Bank* ("*Morrison*"), where the Court held that U.S. securities laws apply only to domestic transactions. The *Petrobras* class certification motion turned largely on whether the question of where each investor's purchases occurred presents individual issues that would "predominate" over common questions in the case. In certifying the class, Judge Rakoff found that "the *Morrison* determination is administratively feasible" in a class action. In particular, Judge Rakoff determined that:

> The criteria identified by [the Second Circuit], as relevant to the determination of whether a transaction was domestic, are highly likely to be documented in a form susceptible to the bureaucratic processes of determining who belongs in a class. For example, documentation of 'the placement of purchase orders' is the sort of discrete, objective record routinely produced by the modern financial system that a court, a putative class member, or a claims administrator can use to determine whether a claim satisfies *Morrison*.

In addition to challenging this finding, Petrobras also challenged Judge Rakoff's finding that market efficiency for Petrobras securities was sufficient to satisfy the fraud-on-the-market theory. This theory makes it possible to establish the element of reliance, which is required for such claims, on a class-wide basis.

Petrobras filed an interlocutory appeal, and in June the Second Circuit agreed to hear Petrobras' appeal, on an expedited basis.

Since that time, numerous amicus briefs from non-parties have been submitted in support of Judge Rakoff's decision. Notably, the National Conference of Public Employee Retirement Systems ("NCPERS") filed an amicus brief in support of class certification. NCPERS is the largest national, non-profit public pension trade association. With respect to the Securities Act claims related to the note purchases, and in particular with respect to the issue of whether determining whether a transaction occurred in the U.S., NCPERS asserts that the class as certified is sufficiently ascertainable through ordinary documentation that would be submitted during an administrative claims process, and that limiting the class to purchasers in domestic transactions does not render the class indeterminate, unfair to class members or defendants, or otherwise defective. Recognizing that the Supreme Court in *Morrison* and the Second Circuit in *Absolute Activist Value Master Fund Ltd. v. Ficeto* set forth straight-forward criteria for analyzing the domestic transaction requirement, NCPERS contends that the types of proof needed to establish the elements of a domestic transaction typically are readily available and amenable to the ordinary claims administration processes in securities cases.

Of Counsel, John A. Kehoe

Similarly, the State Board of Administration of Florida ("SBA") also filed an amicus brief supporting the judge's decision on the domestic versus foreign transaction issue, although its argument was far broader. The SBA, governed by a three-member Board of Trustees that includes the Governor, Chief Financial Officer, and the Attorney General of the State of Florida, has over $170 billion in assets under management. The SBA argues that all trades

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in Petrobras notes, regardless of their origins, should properly be regarded as occurring in the United States because the notes are themselves housed at the Depository Trust Company ("DTC"), located in the United States, and all transactions in those notes occur through DTC's process of "settlement," when the notes are debited from the seller's brokerage account and deposited into the buyer's brokerage account. Such transactions bear all the hallmarks of title transfers and take place entirely within DTC's self-contained electronic system in the New York area, making all trades within that system—including those in Petrobras notes—domestic. Transactions settling through DTC utilize the same method of transfer as all trades on domestic exchanges. This principle would render all trades in these securities automatically "domestic" and would eliminate this as an issue on class determination.

Amicus briefs have also been submitted by twelve distinguished securities law professors on the issue of market efficiency. They note that the fraud-on-the-market presumption of reliance has long been understood as placing a necessarily high burden on a defendant to prove that the alleged misrepresentation did not actually affect the stock's market price, and that this burden should apply with equal force at the class certification stage. They contend that the Second Circuit should endorse this approach, as it best reflects the realities of the modern securities markets and the rationale behind the fraud-on-the-market doctrine.

Remarkably, another group of distinguished professors who teach, research, and write about the laws of evidence filed an amicus brief supporting certification as well. They argue that principles of the law of evidence dictate that, once plaintiffs have satisfied their burden of triggering the fraud-on-the-market presumption of reliance, the burden of persuasion shifts to the defendants to rebut that presumption by a preponderance of the evidence. Contrary to Petrobras' argument, these evidence scholars, several of whom were involved in drafting the Federal Rules of Evidence, argue that with respect to the presumption of reliance under the securities laws, the congressional policy requires shifting the burden of persuasion to defendants in evaluating whether the presumption of reliance has been rebutted.

As the professors aptly note, *Basic Inc. v. Levinson* ("*Basic*") and *Halliburton Co. v. Erica P. John Fund* recognize that such an allocation of the burden of persuasion is necessary to further Congress's purpose underlying the securities laws: namely, to give investors reasonable protection when they buy and sell securities. Furthermore, the evidentiary scholars assert that the fraud-on-the-market presumption is triggered only on a substantial showing by plaintiffs, much greater than is required to trigger many other presumptions, and thus a defendant's burden on rebuttal should be more substantial as well. Reference in *Basic* to the Advisory Committee note on the original version of Rule 301, which required a substantial rebuttal burden, supports the conclusion that a substantial rebuttal burden is required to rebut market efficiency. Indeed, most district courts have adopted the rule that defendants must rebut the presumption by a preponderance of the evidence.

Oral argument is scheduled for November 2, 2016.

OREGON COURT HOLDS EXORBITANT EXECUTIVE COMPENSATION FOR PAST SERVICES RAISES DOUBT THAT DIRECTORS EXERCISED VALID BUSINESS JUDGMENT

Darya Kapulina-Filina

In a recent victory before the Circuit Court of Oregon, the court upheld Pomerantz's shareholder derivative complaint against the board of directors of Lithia Motors, Inc. The case stems from an agreement approved by the board for exorbitant compensation to be paid to Lithia's founder and CEO, Sidney DeBoer, following his resignation. The compensation package entailed annual payments of $1,050,000 for the remainder of DeBoer's life, a $42,000 car allowance, and continued reimbursement for premiums on DeBoer's insurance policies. None of these payments were required by DeBoer's existing employment agreement and, therefore, amounted to a going-away present from the company. The complaint we filed alleged that by approving this giveaway, the board breached its fiduciary duties of care and loyalty and committed waste of corporate assets, resulting in DeBoer's unjust enrichment.

This is a derivative case, brought by shareholders on behalf of the corporation. Under Oregon law, which is analogous to Delaware law, a complaint in a derivative action must allege either that, prior to commencing the lawsuit, shareholders made a demand on the board to take corrective action to avoid litigation, or that demand was excused because it would be "futile" or an "idle gesture." Plaintiffs are typically excused from making a demand if they can show specific facts demonstrating that there was reasonable doubt that (1) the majority of directors are disinterested or independent; or (2) the transaction was a valid exercise of business judgment (more on business judgment below). The plaintiff shareholders in *Lithia* did not make the pre-litigation demand on the board, but included facts in the complaint which we contended showed that demand would have been futile.

The board moved to dismiss our case, arguing that pre-suit demand was not excused and that, in any case, the complaint failed to state a claim for breach of fiduciary duties, corporate waste, or unjust enrichment. The court upheld each of our claims. It held that there is reasonable doubt as to the independence of three out of the seven Lithia directors named in the lawsuit, but three out of seven did not make up a majority. The court went on to analyze whether there was reasonable doubt that the challenged transaction was otherwise the product of a valid exercise of business judgment. The court found that plaintiffs met their "heavy burden" through "particularized facts" in the complaint showing that:

(1) DeBoer would receive his benefits in consideration of his prior services. The court agreed with plaintiffs that past services are not valid consideration for these payments.

(2) The board chose not to retain a compensation consultant and provided no analysis of what other departing executives typically receive.

(3) The board delegated full authority to director William Young to approve the final agreement, and Young had to practically force other members of the Compensation Committee to review the Transition Agreement.

(4) DeBoer's Transition Agreement was not approved by the company's audit committee.

(5) DeBoer's compensation was disproportionately higher than designated in Lithia's "Change of Control Agreement" which specifies compensation payable to him in the event of a sale of all or substantially all of the assets of Lithia, any merger, consolidation or acquisition, or any change in the ownership of more than fifty percent (50%) of the voting stock.

Given these facts, the court found that "plaintiffs have plead particularized facts in their complaint which create a reasonable doubt that the transaction was a product of valid business judgment . . . [and] plaintiffs raise a reason to doubt that the directors were adequately informed in making their decision." As a result, the shareholders were excused from making a pre-litigation demand on the board.

The court went on to uphold each of plaintiffs' substantive claims. As for our claims against DeBoer, It held that just because he did not personally vote on whether to approve his compensation, he was nonetheless potentially liable for a breach of fiduciary duties claim for "indirectly engaging in the transaction." The court relied on the shareholders' allegations that:

(1) DeBoer, owning 52% of the votes, admittedly can cause the company to enter into agreements with which other stockholders do not agree.

(2) DeBoer engaged in a self-dealing transaction.

(3) The board "generally failed to cleanse the taint of self-interest and should have obtained shareholder approval."

The court upheld the waste of corporate assets claim, relying on plaintiffs' allegations that the compensation in question was in exchange for past services and was beyond what the compensation committee deemed fair. It found that plaintiffs' allegations "suggest an unreasonable exchange" because according to Lithia's Change of Control Agreement, the Transaction Agreement overcompensated DeBoer by 1,000%.

Finally, the court upheld plaintiffs' unjust enrichment claim on the basis that DeBoer's compensation was for past services rendered, for which DeBoer had already been compensated.

The *Lithia* decision is instructive to other shareholders who need to overcome the test for demand futility but are not able to establish that the majority of the board of directors were conflicted. Shareholders can overcome business judgment and establish doubt as to the board's informed decision-making and valid exercise of judgment by detailing the insufficient manner in which directors handled the questioned transaction. Some aspects to highlight in a derivative complaint include:

• Were draft agreements presented to the board or committees (compensation committee, audit committee, special committee)?

• Were questions raised by the board or was the transaction rubber stamped for approval?

• What was the review process and duration of the evaluation of the transaction?

• Did the board retain an outside expert or consultant?

• Was a legal advisor retained to review the propriety of the transaction? The *Lithia* court cited a case involving executive compensation of the president of the Walt Disney Company where the compensation committee met for less than an hour, asked no questions, gave no presentations, did not engage an expert consultant, and approved the exorbitant payments.

• How does the transaction compare with others? Was any comparable transactions analysis made?

• What benefit does the transaction provide to the company and shareholders?

• Was shareholder approval obtained?

Although shareholders still face a heavy burden to overcome the business judgment rule in the context of a demand futility issue, the *Lithia* decision gives hope to shareholders that courts will not just assume the board took adequate measures in approving a questionable transaction such as excessive executive compensation payouts, but may scrutinize the board's review process.

In doing so, they can even allege defendants' federal-law violations for similar conduct.

SUPREME COURT TO REVISIT "PERSONAL BENEFIT" REQUIREMENT FOR INSIDER TRADING CONVICTIONS

By Omar Jafri

The Supreme Court has agreed to hear a case next term involving the standards for insider trading convictions. At issue is whether the government must prove that a corporate insider (the tipper) received a personal benefit of a "pecuniary or similarly valuable nature" in exchange for disclosing confidential information to a remote tippee. In the case in which certification was granted, *U.S. v. Salman*, the Ninth Circuit held that the "personal benefit" requirement was satisfied when the tipper, Maher Kara, a former investment banker at Citigroup, leaked confidential information about mergers and acquisitions in the healthcare industry to his older brother, Michael, who, in turn, passed it on to Maher's brother-in-law, Salman.

Maher and Michael pled guilty and cooperated with the government during Salman's trial. Maher testified that he willingly disclosed confidential information to "benefit" Michael and "fulfill whatever needs he had." Michael testified that he told Salman that Maher was the source of the information, and that Salman agreed to "protect" Maher from exposure. The Ninth Circuit concluded that, in light of the parties' close-knit relationships, Salman must have known that Maher intended to benefit his elder brother when he leaked the confidential information. Based on these facts, the Ninth Circuit upheld Salman's conviction on the ground that Maher gave "a gift of confidential information to a trading relative or friend," and there was sufficient evidence to conclude that Salman knew that Maher personally benefited from the disclosure.

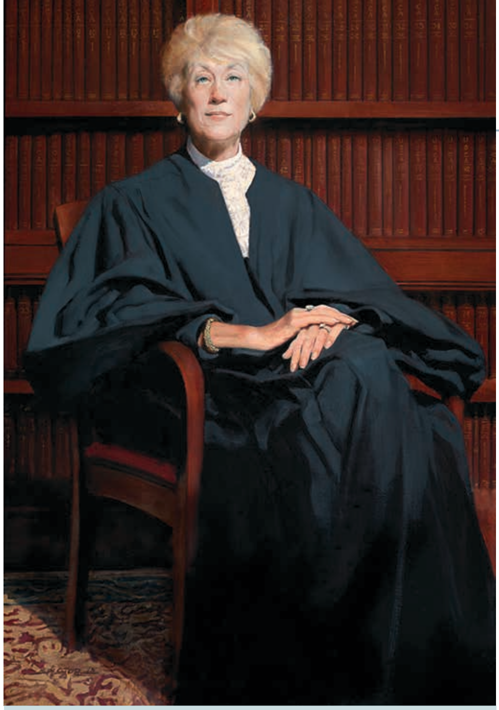
In affirming Salman's conviction, the Ninth Circuit relied on *Dirks v. SEC,* where the Supreme Court held that an insider trading conviction requires that the tipper must receive a personal benefit in exchange for leaking confidential information to a tippee. In *Dirks*, the Supreme Court defined a personal benefit to the tipper as a "pecuniary gain," "a reputational benefit" or "a gift of confidential information to a trading relative or friend."

In concluding that Salman's conduct constituted "a gift of confidential information to a trading relative or friend," the Ninth Circuit rejected Salman's request to adopt the Second Circuit's novel and restrictive approach towards insider trading cases. In *U.S. v. Newman*, the Second Circuit held two years ago that a close personal or familial relationship between the tipper and the tippee, without more, is not sufficient to show that the tipper obtained a personal benefit unless the government proves that the tipper received "… at least a potential gain of a pecuniary or similarly valuable nature." In October 2015, the Supreme Court denied the government's request to review the Second Circuit's decision in *Newman*.

In our view, the Second Circuit's approach contradicts the Supreme Court's holding in *Dirks* that a "gift of confidential information to a trading relative or friend" constitutes a personal benefit. The legal and ordinary definitions of the term "gift" do not contemplate an exchange, consideration or any kind of "pecuniary" or "similarly valuable" benefit in return. For over thirty years, convictions based on insider trading have been sustained even if the tipper did not receive a tangible benefit in exchange for breaches of fiduciary duties and the consequential disclosure of material, nonpublic information. Until *Newman* was decided in 2014, every Circuit held that the law does not require a tipper to obtain a pecuniary benefit, and every Circuit to rule on the issue since *Newman* has held the same. While the Second Circuit paid lip service to *Dirks'* holding by acknowledging that its prior precedent broadly defined a personal benefit to include a "gift of confidential information," the new rule it crafted in *Newman* has upended well-settled law and wreaked havoc on the justice system. Several high-profile convictions and guilty pleas entered in courts in the Second Circuit have been set aside based on *Newman*.

To the extent that the three-judge panel in *Newman* chose to adopt a more restrictive approach to provide clarity and certainty in the law, the effort seems to have failed. In a recent trial in New York City, a former investment banker was convicted of insider trading based on leaking confidential information about healthcare mergers to his father. The government argued that the defendant obtained a pecuniary benefit because his father paid certain expenses in connection with the defendant's wedding. Defendant, however, claimed that the wedding expense payments were not a "pecuniary benefit" but were, instead, a "gift." Friends and relatives give gifts to each other all the time. Drawing such distinctions brings us right back into a gray area subject to endless uncertainty.

In urging the Supreme Court to adopt the Second Circuit's standard and limit convictions to instances where an insider obtains a "potential gain of a pecuniary or similarly valuable nature," Salman argues that the Ninth Circuit's approach raises separation-of-powers and Due Process concerns, and delegates to prosecutors the power to legislate by defining, on an ad hoc basis, the kinds of personal benefits that can make the difference between guilt and innocence. Over the last decade, the Supreme Court, including Justices on both sides of the ideological divide, has been increasingly receptive to these types of arguments when high-profile white collar criminal defendants or powerful politicians accused of corruption are involved. For example, two months ago, the Supreme Court overturned the conviction of Virginia's ex-governor, in part, because it held that ingratiation and access in exchange for lavish gifts and money does not constitute corruption. That decision was unanimous. Whether it will influence the Court's decision in *Salman* remains to be seen.



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Judge Shira A.Scheindlin

DISTINGUISHED FEDERAL DISTRICT JUDGE SHIRA SCHEINDLIN RETIRES

By Adam Giffords Kurtz

Federal District Court Judge Shira Scheindlin of the Southern District of New York stepped down from the bench in April of 2016. Over the past two decades "Judge Scheindlin was one of the hardest working and scholarly judges that I had the honor of appearing before in court, as well as working with in law symposiums," according to Pomerantz partner, Marc Gross. When appearing before Judge Scheindlin, Mr. Gross noted that "[s]he was always incredibly prepared, even on the most esoteric economic issues, asking pointed questions that kept witnesses and counsel on their toes." Over the years, Mr. Gross and Judge Scheindlin have also appeared together at law symposiums, including the Annual Institute For Investor Protection Conference, to speak about securities fraud class actions.

Judge Scheindlin has had a 22-year history of presiding over important securities, antitrust and civil rights class action, cases, and writing landmark case law decisions. Several of them were cases in which Pomerantz represented investors and consumers. Most recently, Pomerantz had great success in an important securities fraud (*Barclays*) and antirust (*NHL & MLB*) cases that were before Judge Scheindlin.

In April 2015, in the "Dark Pool" *Barclays'* securities fraud case, Judge Scheindlin denied defendant Barclays' motion to dismiss, and in February 2016, granted plaintiffs' motion for class certification and appointed Pomerantz as lead class counsel. This case concerns Barclays' false statements regarding the integrity of its "dark pool," an alternative trading platform that does not reveal the size and price of the anonymous trade. Judge Scheindlin's case law decision was important because of its emphasis on the critical importance ("materiality") to investors of management integrity. The decision not only granted class investors and Pomerantz a legal victory, it advanced the important legal standard that false and misleading statements about management integrity could be the foundation of a securities fraud case, even if the amount of money involved is not particularly great. Judge Scheindlin's class certification decision is now on appeal before the Second Circuit Court of Appeals.

As one of her final orders, just before she stepped down from the bench, Judge Scheindlin granted final settlement approval "of a lawsuit brought by fans [against Major League Baseball and cable TV providers] over how games are broadcast, a crack in the dam the league and pay TV have built against unrestrained viewing," according to an article entitled "MLB Settlement Gives Baseball Fans Viewing Options," on Bloomberg.com. Pomerantz was co-lead class counsel. More specifically, the antitrust cases challenged MLB and NHL's "black out" prohibitions of teams from broadcasting or streaming games outside their home and inside outer market territories. Judge Scheindlin concluded that the settlement – worth $200 million to consumers – will lower the price to watch baseball online and increase online viewing options so that (1) fans can watch a favorite team, without blackouts, by subscribing to cable TV and MLB.com; (ii) out of town fans can buy discounted single team online streaming packages; and (iii) hometown fans can stream to all devices. In the parallel *NHL* case, the NHL settled and agreed to provide NHL fans with previously unavailable single-team packages at prices well below the out-of-market bundled package.

However, Marc Gross says, "Judge Scheindlin's greatest contribution was in the arena of social justice and civil rights. She was the first judge in the country to find that certain police tactics (in this case "stop and frisk") were applied in a discriminatory manner, and therefore, were unconstitutional. This was before the "choke hold" and police shooting deaths, and before Ferguson and Black Lives Matter. Her decision allowed New York City and its police to rapidly move forward to address questionable policing tactics, thereby undoubtedly helping to avoid much of the turmoil experienced by other cities."

In the wake of her decision, the number of "stop and frisks" dropped from 685,000 in 2011 to 24,000 in 2015. In May 2016, Judge Scheindlin told Benjamin Weiser of *The New York Times*, "Think of the lives that that has changed, the lives that that has touched,the lives of people who were stopped for no good reason and how intrusive that is." The policy had "bred nothing but distrust," she added. During this same period, major crime in NYC overall dropped 5.8% in the two years since Judge Scheindlin's decision. "As we end [2015], the City of New York will record the safest year in its history, its modern history, as it relates to crime," NYPD Commissioner Bratton said.

Judge Scheindlin has said, "I do what I think is right, and whether the circuit [appeals court], the press, the public or whoever think it's right doesn't matter. Should it? . . . What I hope to do are even more good works than I could accomplish here [as a Judge]."

WELLS FARGO JOINS THE LONG LIST OF MISBEHAVING BANKS

By H. Adam Prussin

Although this was a tiny fraud, by bank standards, it hit home harder than most. Unlike the typical bank horror story, this one did not involve machinations in the sales of complex securities by one financial behemoth to another. Instead, it targeted regular retail customers of the bank, who were victimized by nickel and dime chiseling by over 5,000 low-level Wells Fargo employees. Because victims were mostly everyday people, this story cut through the election year noise and reminded us how bad these people are.

Despite the massive wealth of many banks, retail bank employees are among the lowest paid workers on earth, many earning around $10 an hour. In this case, Wells Fargo reportedly made their lives even more miserable by imposing extremely aggressive sales targets on them if they wanted to keep their jobs or, possibly earn a little Christmas bonus. These sales were supposed to be generated by "cross-selling" additional accounts or services to existing Wells Fargo retail customers. While there is nothing wrong with a bank providing incentives to employees to boost sales, in this case these were really quotas, which were so high that employees usually could not meet them legitimately. So, according to the Consumer Finance Protection Bureau, some 5,300 or so Wells Fargo employees opened about 1.5 million unauthorized deposit accounts in the name of unsuspecting customers and made about 565,000 unauthorized credit card applications, generating about $2.6 million in fees and enabling themselves to keep their jobs.

Years ago, Wells Fargo got wind of this illicit activity, and it apparently made their employees attend "ethics training" courses where they were repeatedly told to stop their fraudulent behavior. The bank supposedly hired more and more "risk managers" to try to prevent it as well. But the crazy sales quotas remained in place. Not surprisingly, then, the misbehavior continued for over five years. Reportedly, many Wells Fargo employees felt that they had no choice but to do whatever it took to meet the bank's impossible sales quotas, or else face termination.

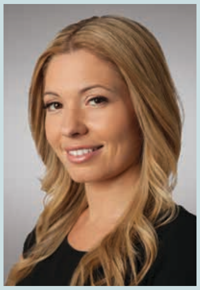
As is typical in cases involving bad bank behavior, once the wrongdoing was publicly exposed, only the little people were held responsible. So far, no one has identified a single member of management who got the axe for failing to prevent or stop this conduct.

Some have suggested that the bank should "claw back" bonuses that were awarded based on phony sales reports. Perhaps they should start by looking at Carrie Tolstedt, the divisional senior vice president for community banking, who was in charge of Wells Fargo's 6,000 branches where the infractions took place. In the last three years, she was paid a total of $27 million. Although she stepped down in July, she remains employed by the bank until the end of the year. When she leaves, she will probably be able to take with her nearly $125 million in stock and options.

In the end, the bank agreed in September to pay a fine of $185 million. When this agreement was announced, the bank's stock dropped about 7.5%, cutting its market capitalization by $19 billion.

On September 20, 2016, Charles Stumpf, CEO of Wells Fargo, testified before the Senate Banking Committee, and repeated his claim that this fraud was the work of a handful of "bad apples." That argument did not sit well. Senator Elizabeth Warren blasted him, saying that "you should give back the money that you took while this scam was going on and you should be criminally investigated by both the Department of Justice and the Securities and Exchange Commission. This just isn't right. A cashier who steals a handful of $20s is held accountable. But Wall Street executives almost never hold themselves accountable."

NOTABLE DATES ON THE POMERANTZ HORIZON

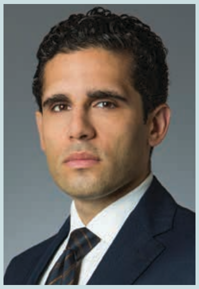

Jennifer Pafiti


Jeremy A. Lieberman


Marc I. Gross


Jayne Goldstein


Emma Gilmore


Justin Nematzadeh

JEREMY LIEBERMAN, EMMA GILMORE, and **JUSTIN NEMATZADEH** will attend the **Council of Institutional Investors' Fall Conferenc** from **September 28-30** in **Chicago**.

JAYNE GOLDSTEIN will attend the **Illinois Public Pension Fund Association's 2016 Pension Fund Conference** from **October 4-6** where she will speak on a panel discussing securities litigation trends.

MARC GROSS will moderate a panel on the impact of civil litigation and regulation on criminal activity in the financial sector on **October 7, 2016,** at the annual **Loyola University for Investor Protection Symposium**.

JENNIFER PAFITI will attend the **NCPERS Conference** in **Las Vegas** from **October 23-26**. She and **JEREMY LIEBERMAN** will host a luncheon on **November 1** for institutional investors in **London**, with guest speaker the Rt. Hon. Michael Portillo, a noted British journalist, broadcaster, and a former Member of Parliment, Deputy Conservative Party Leader, and Cabinet Minister. From **November 8-11, JENNIFER** will attend the **SACRS Fall Conference** in **Indian Wells, California**.

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
RiT Technologies, Ltd.	RITT	March 3, 2015 to July 1, 2016	September 26, 2016
Fiat Chrysler Automobiles N.V.	N/A	October 29, 2014 to July 18, 2016	September 27, 2016
Tokai Pharmaceuticals, Inc.	TKAI	June 24, 2015 to July 25, 2016	September 30, 2016
Keryx Biopharmaceuticals, Inc.	KERX	September 2, 2013 to August 1, 2016	October 3, 2016
Embraer SA	ERJ	April 16, 2012 to July 28, 2016	October 7, 2016
Flowers Foods, Inc.	FLO	February 7, 2013 to August 10, 2016	October 11, 2016
Orbital ATK, Inc.	OA	June 1, 2015 to August 9, 2016	October 11, 2016
Warren Resources, Inc.	WRES, WRESQ	November 4, 2014 to June 2, 2016	October 11, 2016
Concordia International Corp.	CXRX	November 12, 2015 to August 12, 2016	October 14, 2016
SolarCity Corp.	SCTY	May 5, 2015 to February 9, 2016	October 14, 2016
Northern Oil and Gas, Inc.	KNTX, NOG	March 1, 2013 to August 15, 2016	October 17, 2016
SunPower Corp.	SPWR, SPWRA	February 17, 2016 to August 9, 2016	October 17, 2016
The Hain Celestial Group, Inc.	HAIN	November 5, 2015 to August 15, 2016	October 17, 2016
Power Solutions International, Inc.	FRMT, PSIX	May 8, 2015 to August 15, 2016	October 21, 2016
Corrections Corporation of America	CXW	February 27, 2012 to August 17, 2016	October 24, 2016
Global Digital Solutions, Inc	CVBS, GDSI	October 8, 2013 to August 12, 2016	October 24, 2016
Goldcorp, Inc.	GG, GG.A	March 31, 2014 to August 24, 2016	October 24, 2016
Signet Jewelers, Ltd.	SIG	January 7, 2016 to June 3, 2016	October 24, 2016
The GEO Group, Inc.	GEO, WHC	March 1, 2012 to August 17, 2016	October 24, 2016
Yirendai, Ltd.	YRD	May 11, 2016 to August 24, 2016	October 25, 2016
AECOM	ACM	February 11, 2015 to August 15, 2016	October 31, 2016
American Renal Associates Holdings	ARA	April 20, 2016 to August 18, 2016	October 31, 2016
Volkswagen AG (Netherlands)	VOW	April 23, 2008 to January 4, 2016	November 1, 2016
BlueNRGY Group, Ltd. (f/k/a CBD Energy, Ltd.)	CBDEF	June 13, 2014 to October 24, 2014	November 7, 2016
Quorum Health Corp.	QHC	April 29, 2016 to August 10, 2016	November 8, 2016
Xhibit Corp.	NBMF, XBTCQ	May 16, 2013 to September 10, 2014	November 8, 2016
LifeVantage Corp.	LFLT, LFVN	November 4, 2015 to September 13, 2016	November 14, 2016
Polaris Industries, Inc.	PII	January 26, 2016 to September 11, 2016	November 15, 2016
Twitter, Inc.	TWTR	February 6, 2015 to July 28, 2015	November 15, 2016
Misonix, Inc.	MSON	November 5, 2015 to September 14, 2016	November 18, 2016

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
Occam Networks, Inc. (2010)	$35,000,000	On or about February 28, 2011	September 26, 2016
Aerohive Networks, Inc.	$5,750,000	March 27, 2014 to September 23, 2014	September 27, 2016
NII Holdings, Inc.	$41,500,000	February 25, 2010 to February 27, 2014	September 28, 2016
Barrick Gold Corporation (2013)	$140,000,000	May 7, 2009 to November 1, 2013	September 29, 2016
Caremark, Rx, Inc. f/k/a MedPartners, Inc.	$310,000,000	October 30, 1996 to January 7, 1998	September 30, 2016
Marrone Bio Innovations, Inc.	$12,000,000	August 1, 2013 to November 10, 2015	October 2, 2016
MOL Global, Inc.	$8,500,000	October 9, 2014 to November 21, 2014	October 4, 2016
Intercept Pharmaceuticals, Inc.	$55,000,000	January 9, 2014 to January 10, 2014	October 5, 2016
Longwei Petroleum Investment Holding	$1,340,000	September 28, 2010 to January 3, 2013	October 5, 2016
Nu Skin Enterprises, Inc.	$47,000,000	May 4, 2011 to January 17, 2014	October 6, 2016
InnerWorkings, Inc.	$6,025,000	February 15, 2012 to November 6, 2013	October 8, 2016
TIBCO Software Inc. (2014) (Delaware Ch.)	$30,439,251	On or about December 5, 2014	October 10, 2016
BP p.l.c. (SEC)	$525,000,000	April 26, 2010 to May 26, 2010	October 11, 2016
Mavenir Systems, Inc.	$3,000,000	March 2, 2015 to April 29, 2015	October 12, 2016
Covisint Corp.	$8,000,000	September 26, 2013 to October 14, 2014	October 19, 2016
Urban Outfitters, Inc.	$8,500,000	March 12, 2013 to September 9, 2013	October 24, 2016
Biozoom, Inc. (f/k/a Entertainment Art) (SEC)	$16,117,936	May 16, 2013 to June 25, 2013	October 31, 2016
Dana Corp.	$64,000,000	April 21, 2004 to October 7, 2005	October 31, 2016
Ocean Power Technologies, Inc.	$4,197,000	January 14, 2014 to July 29, 2014	October 31, 2016
Castlight Health, Inc.	$9,500,000	March 14, 2014 to September 10, 2014	November 1, 2016
Prudential Financial, Inc.	$33,000,000	May 5, 2010 to November 4, 2011	November 2, 2016
Corinthian Colleges, Inc.	$3,500,000	August 23, 2010 to April 14, 2015	November 7, 2016
Trius Therapeutics, Inc.	$9,400,000	July 30, 2013 to August 21, 2013	November 7, 2016
Erickson Air-Crane, Inc. (n/k/a Erickson, Inc.)	$18,500,000	March 18, 2013 to June 13, 2016	November 10, 2016
Websense, Inc.	$40,000,000	May 20, 2013 to June 30, 2013	November 10, 2016
Bank of America Corp. (MERS and MBS)	$335,000,000	February 27, 2009 to October 19, 2010	November 14, 2016
Onyx Pharmaceuticals, Inc.	$30,000,000	August 25, 2013 to October 2, 2013	November 14, 2016
Penn West Petroleum Ltd. (Canada)	$19,163,210	March 17, 2011 to September 18, 2014	November 14, 2016
Credit Suisse Securities (USA) (SEC)	$101,747,769	January 1, 2005 to December 31, 2010	November 15, 2016
Credit Suisse Securities (USA) (SEC)	$18,256,561	November 29, 2006 to December 28, 2006	November 15, 2016
Lumber Liquidators Holdings, Inc.	$42,020,000	February 22, 2012 to February 27, 2015	November 19, 2016
Electronic Game Card, Inc.	$1,755,000	April 5, 2007 to May 18, 2010	November 28, 2016

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