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POMERANTZ STRATEGIC CONSUMER PRACTICE TARGETS THE AUTO INDUSTRY

By Jordan L. Lurie and Ari Y. Basser

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Pomerantz is proud to introduce its Strategic Consumer Litigation Practice, headed by Jordan Lurie, a partner in the Firm's Los Angeles office. This practice group represents consumers in actions that recover monetary and injunctive relief on behalf of class members while also advocating for important consumer rights.

Forget the engine and the shiny rims. Connected vehicles have become the next big thing for the automotive industry.

Nothing is driving the acquisition of car data faster than, well, driving. While connecting cars to computers is not new, what has changed is the volume and precision of the data and the information that is being extracted and connected to the Internet. The average modern-day car can contain 100 million lines of code (more than a space shuttle). Connected vehicles can monitor, collect and transmit information about their external and internal environment. The types of data generated by modern vehicles include sensitive categories such as location, biometric and behavioral information. Car makers have transformed the automobile from a machine that helps us travel to a sophisticated smartphone on wheels.

Bundling and selling data from connected cars will be a massive new revenue stream for auto manufacturers on the order of billions of dollars a year. Car manufacturers also are profiting from car data by building partnerships with third party service suppliers and exchanging data with them. If a pizzeria that a driver frequents is provided with data about the driver's location as she's driving by, the driver will get an offer to get a discount on a pizza if she picks it up right then and there, hot and ready to go. This is possible because of the vehicle data the car manufacturer has provided, and companies such as pizzerias are willing to pay car manufacturers for that data. According to a study by McKinsey & Company, by 2020 – just around the corner – automakers will be able to make more money selling vehicle data than by selling the cars themselves, and by 2030, the market for in-vehicle connectivity worldwide is expected to reach $750 *billion.*

In their desire to monetize vehicle data, car makers have turned on a powerful spigot of precious personal information without adequate disclosures and without offering to compensate drivers for use of their own car data. Consumers deserve, and are legally entitled, to know what data their car is collecting and transmitting and who has access to this information, and to have the opportunity to opt-in to data collection and the ability to participate in the commercialization of their own data. Car manufacturers are not entitled to use it for free and without full and adequate disclosures at the point of sale.

To address these wrongs on behalf of drivers and consumers, Pomerantz has instituted a series of actions against major car manufacturers, including General Motors and Jaguar Land Rover, to compel defendants to establish a framework for compensating drivers for defendants' use of their car data and/or to compensate current and future car owners for the use of their car data (for example, by offering buyers financial incentives for the collection and use of vehicle data, lower monthly lease payments or discounted pricing or rebates, direct free features or services, or by otherwise subsidizing the cost of the car).

Partner Jordan L. Lurie

Pomerantz also seeks to require all car companies to provide prospective owners with written vehicle data and disclosure policies at the time of sale or lease and to obtain adequate consent or authorization to use or take information or data from owners' car computer systems prior to purchase. At a minimum, there should be an easy-to-read facts sheet that provides for, among other things, opt-in consent to data collection and use; it should be possible for vehicle owners to access their data at any time in a usable format, delete their data at any time, revise the parameters of their data sharing at any time, and turn off their data at any time; and any data collected should not be monetized or utilized without the vehicle owners' express consent. Absent any express agreement by vehicle purchasers, car companies should limit data collection to information reasonably necessary to operate the vehicle and maintain vehicle safety (including enabling real time emergency calls, immediate information that facilitates rescue services and road hazard warnings).

Vehicle Emissions Warranty Fraud Drives New Wave of Litigation

Owning a vehicle is one of the largest expenditures of

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households in the United States, second only to housing. According to the American Automobile Association, an average repair bill is between $500 and $600, which an estimated 64 million American drivers (33% of vehicle owners) would not be able to pay without going into debt. To offset the soaring price of vehicle ownership and maintenance, most new vehicles come with a factory written warranty which is a promise, made by a manufacturer, to stand behind its product and to fix certain defects or malfunctions up to a certain time period or mileage milestone (whichever comes first). The manufacturer's warranty covers all major components of a vehicle and is intended to pay for any covered repairs or part replacements during the warranty period.

For decades, car manufacturers have been selling vehicles that are subject to unique state regulations regarding emissions standards. California's stringent emissions rules require automakers to provide longer warranties and cover more items in order to identify malfunctioning emission control components and encourage repair to ensure emission control systems continue to function as designed and emissions remain low. Under California law (and similar regulations in other states), vehicle manufacturers are required to identify all "high-priced warranted parts" in Partial Zero Emissions Vehicles ("PZEVs") and hybrid vehicles, which are entitled to warranty protection for 7 years or 70,000 miles under California's High-Cost Emissions-Related Parts Warranty. California emissions warranty laws supersede and extend any manufacturer's warranty offered at the point of sale.

A "high-priced warranted part" is a warranted part which is a component that "affects any regulated emission from a motor vehicle or engine which is subject to California emission standards," or that causes a vehicle's on-board diagnostic malfunction indicator light to illuminate.

Automotive companies determine whether the "individual replacement cost" of a warranted part exceeds the applicable cost limit by taking into account the model year of the new vehicle at issue and the annual average nationwide urban consumer price index published by the United States Bureau of Labor Statistics ("CPI"). The relevant time period for this determination is the time of certification. The "replacement cost" of an individual component is equal to "the retail cost to a vehicle owner" and includes "the cost of the part, labor, and standard diagnosis." For each new vehicle, the manufacturer has the duty to identify, with supporting background information, each of the emissions-related and high-priced parts that are entitled to extended warranty coverage as a high-price emissions part.

Pomerantz has uncovered the fact that car manufacturers unilaterally identify some, but not all, of the "high-priced" warranted parts that should properly be covered under the emissions warranty for 7 years and 70,000 miles in order to minimize the manufacturers' warranty exposure. By not comprehensively identifying, in their warranty booklets and in information provided to dealerships, *all* of the parts that should be included as "high-priced" warranted parts, car manufacturers are able to limit the warranty coverage for those parts to only 3 years and 50,000 miles. As a result, consumers are forced to pay out of pocket for these repairs which, by operation of law, should be paid for by the manufacturers.

To date, Pomerantz has initiated actions in state and federal courts against BMW, Jaguar Land Rover North America, Kia, and Hyundai, to recover reimbursement of all costs wrongfully incurred by vehicle owners for repairs that should have been covered under California's high-cost emissions warranty law, and to obtain orders compelling these manufacturers to accurately and comprehensively identify all parts and labor that should be covered under California's high-cost emissions warranty. These actions will allocate repair costs appropriately between manufacturers and vehicle owners and promote California's interest in curbing emissions.

THE SUPREMES AND CONGRESS PONDER DISGORGEMENT

By Cara David

The *Kokesh* Decision. The Supreme Court's 2017 decision in *Kokesh v. SEC* held that SEC actions seeking disgorgement were subject to a five-year statute of limitations. However, the SEC—and investors—might find relief in recent bills now pending before Congress. On the other hand, there is a chance the SEC will lose its ability to seek disgorgement as an equitable remedy entirely unless the securities laws are amended.

With its decision in *Kokesh,* the Supreme Court left the SEC struggling to collect on long-running frauds. The disgorgement remedy is a powerful one—it forces defendants to cough up ill-gotten gains they obtained by violating the securities laws. While civil penalties are meant to function as both punishment and deterrent, disgorgement in theory functions under the premise that a wrongdoer should not be able to keep the ill-gotten gains from the fraud. In dollar terms, disgorgement awards often dwarf other remedies available to the SEC. The SEC never possessed explicit statutory authority to seek disgorgement, but federal district courts have been allowing them to do it for years on the premise that it was a form of "equitable relief." The *Kokesh* decision held that disgorgement constituted a "penalty" for statute of limitations purposes and, therefore, was subject to the five-year statute of limitations that applied to civil fines or other statutory penalties. This prevented the SEC from recovering, according to agency estimates, more than $1.1 billion in proceeds, and hurt retail investors who could no longer hope to share in these disgorged funds.

Despite defense attorneys' attempts to extend the Supreme Court's reasoning to other forms of relief, *Kokesh* has almost universally been held to apply only to disgorgement. Even that has had a profound impact, however, not only by restricting the amount of money that could be recovered by the SEC when it brings a case, but as a deterrent to the SEC pursuing a case when the majority of ill-gotten gains will never be recouped. Indeed, in its year-end report, the SEC Office of the Investor Advocate itself raised "fewer investigations involving aged conduct" as one of the potential impacts of *Kokesh.*

This has repercussions on private class actions, as SEC complaints often help plaintiffs in private actions.

"[A]s I look across the scope of our actions, including most notably Ponzi schemes and affinity frauds, I am troubled by the substantial amount of losses that we may not be able to recover for retail investors…," SEC Chairman Jay Clayton stated on December 11, 2018 in testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs. "Allowing clever fraudsters to keep their ill-gotten gains at the expense of our Main Street investors—particularly those with fewer savings and more to lose—is inconsistent with basic fairness and undermines the confidence that our capital markets are fair, efficient and provide Americans with opportunities for a better future."

Congress Reacts to *Kokesh*. Investors and the SEC might be in for some help, though when that help will come, what it will look like, and to what degree it will benefit victims, are still up for debate. In March, Sen. John Kennedy (R-La.) partnered with Sen. Mark Warner (D-Va.) to introduce the Securities Fraud Enforcement and Investor Compensation Act, which would not overturn *Kokesh* but would grant the SEC more power than it currently has. Their bill would explicitly grant the SEC the authority to seek disgorgement, subject to the same five-year limitations period under *Kokesh,* but would also allow the SEC to seek restitution for an investor, in the amount of the loss that the investor sustained, subject to a ten-year statute of limitations. Unlike disgorged funds, whose disposition is subject to SEC discretion, restitution directly compensates the defrauded investors.

As that bill remains in committee, members of the House have progressed further. The Investor Protection and Capital Markets Fairness Act, proposed by Reps. Ben McAdams (D-Ut.) and Bill Huizenga (R-Mi.), passed the House Financial Services Committee in September by a bipartisan vote of 49-5. On November 18, it passed a full House vote by a margin of 314-95. This bill would give the SEC fourteen years to seek disgorgement of ill-gotten gains from fraudsters. McAdams' original draft of the legislation had no statute of limitations, but the fourteen years was included as a compromise with those that believe the SEC should be restrained in their abilities. This bill has been referred to the Senate's Committee on Banking, Housing, and Urban Affairs, on which both sponsors of the Senate bill sit.

SEC Chairman Clayton has expressed support for the Senate bill but has not publicly commented on the House bill. And many still oppose any extension of the five-year cutoff. For example, the Securities Industry and Financial Markets Association (SIFMA)–the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets–sent a letter to the House Financial Services Committee expressing its opposition to H.R. 4344. The letter, released to the public, read: "SIFMA strongly opposes increasing the limitations period of 5 years to 14 years, particularly where the SEC has historically used disgorgement to punish respondents, rather than recover monies for investors, as the Court found in *Kokesh*. The Court appropriately curtailed the SEC's use of disgorgement to a 5-year limitations period in recognition of its historical overreach in wielding it against respondents."

The issue SIFMA highlights is the same one that appears to have motivated the Supreme Court's unanimous decision: the purpose of disgorgement. Though penalties and interest can be awarded to victims via a Fair Fund, there is something about disgorgement being premised in equity that almost compels the conclusion that it *should be* used to restore victims to where they were prior to the fraud. But that is often not how disgorged funds have been used. In the *Kokesh* decision, Justice Sotomayor, writing on behalf of a unanimous Court, noted that the disgorgement order in that case "bears all the hallmarks of a penalty: It is imposed as a consequence of violating a public law and it is intended to deter, not to compensate. … Disgorged profits are paid to the district courts, which have discretion to determine how the money will be distributed. They may distribute the funds to victims, but no statute commands them to do so. … True, disgorgement serves compensatory goals in some cases; however, we have emphasized the fact that sanctions frequently serve more than one purpose." In this case, disgorgement, according to the Court, was a penalty because it served "retributive or deterrent purposes."

Of Counsel Cara David

Some commentators have queried whether *Kokesh* would have been decided differently if the disgorgement order in that case directed that the recovered funds be distributed entirely to defrauded investors.

***Liu* Raises the Stakes.** The Supreme Court stated in a footnote in *Kokesh* that it was declining to take a position on "whether courts possess authority to order disgorgement in SEC enforcement proceedings or on whether courts have properly applied disgorgement principles in this context." However, several of the justices questioned that authority during oral arguments.

Now they will get a chance to rule on it—on November 1, 2019, the Supreme Court agreed to hear the case *Liu v. SEC,* which squarely presents the issue of whether the SEC may seek and obtain disgorgement. In that case, the district court had ordered defendants to disgorge approximately $26.7 million and also imposed other monetary penalties. The court of appeals affirmed. The defendants petitioned the Supreme Court to take another look, arguing, among other things, that the treatment of disgorgement as an "equitable remedy" does not survive *Kokesh*. With *Liu,* the Supreme Court faces yet another case where the district court order does not specify that the disgorged funds will be returned to victims.

The race is on. With Congress not known for its speed, it's likely the Supreme Court will rule before any bill becomes law. If it rules for petitioners, the SEC could lose its ability to impose disgorgement as an equitable remedy altogether until Congress acts.

Of note, both of the proposed bills would grant the SEC explicit authority to seek disgorgement, but neither of them requires that monies recovered go to victims. The Senate bill does get closer because the amendment currently in committee in the Senate includes "restitution" in addition

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to "disgorgement." Under the restitution section, the SEC "may seek, and any Federal court, or, with respect to a proceeding instituted by the Commission, the Commission, may order restitution to an investor in the amount of the loss that the investor sustained as a result of a violation of that provision by a person that is—(A) registered as, or required to be registered as, a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or transfer agent; or (B) associated with or, as of the date on which the violation occurs, seeking to become associated with, an entity described in subparagraph (A)." This goes further than prior law but only covers a subdivision of fraudsters and, additionally, it does not mandate the SEC seek restitution. Under the bill, if the agency is proceeding after five years following the unjust enrichment, but before ten years, the agency would seek restitution because it could not seek disgorgement. That seems obvious but does not really get investors all the way there. Perhaps a better bill would require a certain amount of disgorged funds go to investors regardless of when the action is brought. Time will tell whether, as these bills proceed, amendments will alter them in accordance with the concerns the Supreme Court expressed in *Kokesh* and/or whether the opinion in *Liu* will alter the process.

Partner Tamar A. Weinrib

THE NEWLY REVISED ROLE OF A CORPORATION

By Tamar A. Weinrib

The Business Roundtable, a lobbying group of CEOs formed to promote pro-business interests, recently issued a statement "modernizing its principles on the role of a corporation." Upending the decades long, widely accepted view that the goal of a corporation is to increase shareholder value, nearly two hundred chief executive officers of some of the largest U.S. corporations recognized in that statement that investors are but one spoke on the wheel of a corporation's success. Since 1978, the Roundtable had periodically issued "Principles of Corporate Governance" stating that the primary purpose of a corporation is serving its shareholders. Indeed, Milton Friedman, the University of Chicago economist who is the doctrine's most revered figure, famously wrote in *The New York Times* in 1970 that "the social responsibility of business is to increase its profits."

Now, 181 of the Roundtable's 193 members, including Marry Barra of General Motors, Jeff Bezos of Amazon, and Tim Cook of Apple, have revised that stated purpose to "ensure more inclusive prosperity" by encouraging companies to "build long term value by investing in their employees and communities." This includes new corporate ideals such as compensating employees fairly, providing adequate training and education, fostering diversity, dealing ethically with suppliers, and supporting communities. Both in its initial statement and a subsequent publication responding to questions and criticism, the Roundtable emphasized that the statement is not a "repudiation of shareholder interests in favor of political and social goals."

The primacy of shareholder interests was solidified in the 1980s, in an era of hostile corporate takeovers. In many of those cases, boards of directors, seeking to protect their positions, justified their rejection of buyout offers that looked favorable to shareholders by hiding behind other interests, such as protecting employees from post-takeover layoffs. In a series of landmark decisions, the Delaware courts enshrined the notion that once a company is for sale, "maximizing shareholder value" has to be the most important consideration.

In addition to other pro-corporation endeavors, in 1975 the Roundtable helped defeat anti-trust legislation; in 1977 it helped defeat a plan for a consumer protection agency and successfully blocked labor law reform; and in 1985 it successfully lobbied for a reduction in corporate taxes. The current shift in corporate purpose acknowledges the integral role large corporations need to play in effectuating change on issues like climate change and water and resource scarcity. The timing of this acknowledgment is not accidental. Large corporations have increasingly come under attack for their failures to protect societal interest—including health, environment, and consumer privacy—while chasing profits. For example, a judge recently fined Johnson & Johnson $572 million for contributing to the opioid crisis in Oklahoma. ExxonMobil has been criticized for the years it spent challenging climate science and slowing global action. Facebook has been heavily criticized for sharing its users' data with other companies without consent.

While laudable in theory, the Roundtable's new corporate purpose statement is wholly devoid of actionable content. Words, however lofty, are insignificant without concrete change. Critics worry that the statement promotes managerial confusion as to how to balance and prioritize goals that are at times conflicting—employees versus community versus stakeholder value. Indeed, the Council of Institutional Investors responded to the Roundtable's statement by declaring that "accountability to everyone means accountability to no one." Moreover, instituting new policies to effectuate the new corporate purpose would mean overhauling entire business models for some businesses—rendering it unlikely such corporations would practice what they've just begun to preach. In addition, notably missing from the Roundtable's statement is any mention of other major corporate issues such as exorbitant executive compensation, which dwarfs median employee pay by many multiples. Treasury Secretary Steve Mnuchin has declared, "I wouldn't have signed it," calling the statement a "simple answer" that "does not fully explore the issues." Another vocal critic stated, "how can you tell people who had confidence in you and devoted their hard-earned money to you that they are last in line?"

Interestingly, Chief Financial Officers do not seem to share their CEOs' view that change is necessary. In a CNBC CFO survey, almost 100% of CFOs rated their companies at least "above average" in delivering value to customers, investing in their employees, supporting communities and dealing with suppliers." 96% also rated their companies "above average" in delivering long-term value to shareholders.

RETIRING DELAWARE CHIEF JUSTICE ISSUES A SWEEPING MANIFESTO FOR CORPORATE LAW REFORM

By Gustavo F. Bruckner

It is not controversial to say that over the last two decades, no jurist has had a greater impact on the state of corporate governance in this country than Chief Justice Leo Strine of the Delaware Supreme Court. After all, Delaware is the state of incorporation for over 50% of all publicly traded corporations in the U.S. and 60% of Fortune 500 companies. Many other states, recognizing the preeminence of Delaware courts in the field of corporate law, have looked to Delaware court decisions for guidance on resolving open corporate law questions in their own jurisdictions. So Delaware court decisions on issues of corporate law have far-reaching ramifications. Chief Justice Strine has spent the last 21 years dispensing just such opinions, the first 16 on Delaware's Court of Chancery, and since 2014, while leading the state's highest and only appellate court. Earlier this year, Chief Justice Strine caused a bit of a stir when he announced that he would retire this fall.

Justice Strine's decisions, bolstered by his vast academic output, have captivated and transformed corporate America. Many of his opinions are considered among the most influential rulings in corporate law. More often than not these decisions have protected corporate boards from investor challenges to their actions.

In 2013, Justice Strine, then Chancellor, set a new, more relaxed standard of review of investor suits challenging controller-led buyouts in the *In re MFW Shareholders Litigation.* Because the controlling shareholder is in a position to control the actions of the company, in the past such transactions have been reviewed by the courts under the "entire fairness" standard, which puts the burden on the controller to show that the transaction was fair. Chancellor Strine ruled that when a company sells to a controlling party, forcing out minority shareholders, the deal will be subject to a more relaxed business judgment standard of review as long as it is subject to two conditions: that it was negotiated and approved by a special committee of informed independent directors on behalf of the company; and that a majority of the non-controlling stockholders, being fully informed and uncoerced, vote to approve the deal. Virtually every controller-led buyout since then has contained those two conditions, thus making those deals almost impossible to challenge successfully. Most recently, the Chancery Court has extended the application of MFW to non-buyout related controlling party transactions.

Also in 2013, Chancellor Strine ruled in the *Boilermakers Local 154 Ret. Fund v. Chevron Corporation* case that Delaware companies can adopt forum selection bylaws that require that Delaware be the venue for deciding claims involving the internal affairs of the corporation. This decision further cemented Delaware's exalted position as the center of corporate jurisprudence and helped limit multi-jurisdictional litigation.

In 2015, perched firmly as Chief Justice, Justice Strine upheld the lower court decision in *Corwin et al. v. KKR Financial Holdings,* holding that the more relaxed business judgment rule is the appropriate standard of review for a post-closing damages action when a merger not otherwise subject to the heightened entire fairness standard of review has been approved by a fully informed, uncoerced majority of the disinterested stockholders. Because *MFW* had put a chill on pre-closing challenges, most merger challenges were occurring post-closing. This ruling drastically cut back the number of post-closing challenges to corporate mergers and eased the threat of stockholder litigation as a potential cudgel for an improved sale price.

And in a string of appraisal action decisions culminating this past April in *Verition Partners Master Fund Ltd. et al. v. Aruba Networks Inc.,* Chief Justice Strine all but eviscerated the practice of appraisal arbitrage litigation by finding that the negotiated deal price is the best starting point for determining true appraisal value. Appraisal arbitrage is the practice whereby activist investors buy up the shares of a corporation to be acquired by merger in order to assert appraisal rights challenging the price of the deal. The practice is controversial because the appraisal remedy was meant to protect existing stockholders forced to sell their shares in the merger, not financial opportunists who purchased shares at the last minute, hoping for an appraisal windfall.

Partner Gustavo F. Bruckner

So, after a career of setting important board protections, it was no small surprise that on the cusp of retirement, Justice Strine has now issued a sweeping proposal for overhauling American capitalism that suggests that corporate boards need to refocus their attention on worker rights.

Among the proposals laid out in his paper, titled "Toward Fair and Sustainable Capitalism," Justice Strine posits that companies with annual sales over $1 billion should disclose annually how they treat workers and whether they operate in an ethical, sustainable, and environmentally responsible manner. He argues that accounting rules need to be amended so as to treat investments in human capital like other long-term investments and mandates disclosure on human capital investments.

Justice Strine also believes the tax system should be updated to reduce speculation, address climate change, and promote sustainable growth, innovation, and job creation. He would change the holding period for long-term capital gains from one year to five and would impose a modest tax on most financial transactions, transferring the tax revenue to a newly created Infrastructure, Innovation, and Human Capital Trust Fund.

Justice Strine would also prohibit a public company's political spending without 75% of shareholders' consent and would reform the union election process by permitting card check elections to make it easier for employees to join unions and collectively bargain over wages.

These proposals, often associated with the left side of the political spectrum, carry significant weight coming from such a prominent and respected jurist who spent much of his career defending corporate boards from exactly such prodding. Only time will tell if Justice Strine's lasting legacy are the rulings from his seat on the bench or his admonitions as he steps down.

NOTABLE DATES ON THE POMERANTZ HORIZON

Jennifer Pafiti

Jeremy A. Lieberman

Roxanna Talaie

Jirdan L. Lurie

JORDAN LURIE will speak on The Consumer Privacy Act as a Class Action Vehicle at **Bridgeport's Annual Class Action Conference** in Costa Mesa, California on January 10.

JENNIFER PAFITI and **ROXANNA TALAIE** will attend the **Opal Group Public Funds Summit** from January 6 to 8, in Scottsdale, AZ; the **NCPERS Legislative Conference** from January 26 to 28, in Washington, DC; and the **NASRA Winter Meeting** in Washington, DC from February 29 to March 2.

JEREMY LIEBERMAN will attend a **Roundtable Event** on January 20 in Tel Aviv, Israel, sponsored by Pomerantz, along with Bar Ilan University, Yigal Arnon & Co., and Guy, Bachar & Lavie Law Firm. The theme of the event will be **Class Action Litigation in the U.S. and Israel**. **JEREMY** will discuss recent U.S. Supreme Court rulings that impact Israeli institutional investors.

CORPORATE GOVERNANCE ROUNDTABLE EVENT

WITH SPECIAL GUEST SPEAKER

PRESIDENT BILL CLINTON

HOSTED BY

THE

CORPORATE GOVERNANCE INSTITUTE, INC.

AND

POMERANTZ LLP

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JUNE 16, 2020

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

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Seating is limited. To reserve your place, please email: pomerantzroundtable2020@pomlaw.com

POMTRACK® CLASS ACTIONS UPDATE

Pomerantz, through its proprietary PomTrack® system, monitors client portfolios to identify potential claims for securities fraud, and to identify and evaluate clients' potential participation in class action settlements.

NEW CASES:

Recently filed securities class action cases filed by various law firms are listed below. If you believe your fund is affected by any of these cases, contact Pomerantz for a consultation

CASE NAME	TICKER	CLASS PERIOD	LEAD PLAINTIFF DEADLINE
Twitter, Inc.	TWTR	August 6, 2019 to October 23, 2019	December 30, 2019
Uniti Group Inc. *f/k/a Communications Sales & Leasing*	UNIT	April 20, 2015 to February 15, 2019	December 30, 2019
Sealed Air Corporation	SEE	November 5, 2014 to August 6, 2018	December 31, 2019
Abeona Therapeutics, Inc.	ABEO	May 31, 2018 to September 23, 2019	January 2, 2020
AZZ, Inc.	AZZ	July 3, 2018 to October 8, 2019	January 3, 2020
Bloom Energy Corporation	BE	July 26, 2018 to September 16, 2019	January 3, 2020
Quad/Graphics, Inc.	QUAD	February 21, 2018 to October 29, 2019	January 6, 2020
Tandy Leather Factory, Inc.	TLF	March 7, 2018 to August 15, 2019	January 6, 2020
Under Armour, Inc.	UAA	August 3, 2016 to November 1, 2019	January 6, 2020
UP Fintech Holding Limited	TIGR	March 20, 2019 to May 16, 2019	January 6, 2020
Resideo Technologies, Inc.	REZI	October 10, 2018 to October 22, 2019	January 7, 2020
Plantronics, Inc.	PLT	July 2, 2018 to November 5, 2019	January 13, 2020
Yunji, Inc.	YJ	re May 2019 IPO	January 13, 2020
Armstrong Flooring, Inc.	AFI	March 6, 2018 to November 4, 2019	January 14, 2020
Lipocine, Inc.	LPCN	March 27, 2019 to November 8, 2019	January 14, 2020
Wanda Sports Group Company Limited	WSG	re July 2019 IPO	January 17, 2020
Canopy Growth Corporation	WEED	June 21, 2019 to November 13, 2019	January 20, 2020
Energy Transfer LP *(f/k/a Energy Transfer Equity)*	ET	February 25, 2017 to November 11, 2019	January 20, 2020
Grubhub, Inc.	GRUB	July 30, 2019 to October 28, 2019	January 20, 2020
Aurora Cannabis, Inc.	ACB	September 11, 2019 to November 14, 2019	January 21, 2020
Baxter International, Inc.	BAX	February 21, 2019 to October 23, 2019	January 24, 2020
The RealReal, Inc.	REAL	re June 2019 IPO	January 24, 2020
HEXO Corporation	HEXO	January 25, 2019 to November 15, 2019	January 27, 2020
Prudential Financial, Inc.	PRU	February 15, 2019 to August 2, 2019	January 27, 2020
Fiat Chrysler Automobiles N.V.	FCA	February 26, 2016 to November 20, 2019	January 31, 2020
Merit Medical Systems, Inc.	MMSI	February 26, 2019 to October 30, 2019	February 3, 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
PPG Industries, Inc.	$25,000,000	January 19, 2017 to May 10, 2018	December 20, 2019
Banco Bradesco S.A.	$14,500,000	August 8, 2014 to July 27, 2016	December 21, 2019
Baffinland Iron Mines Corporation (Canada)	$4,852,830	September 22, 2010 to January 13, 2011	December 25, 2019
SFX Entertainment, Inc.	$6,750,000	February 25, 2015 to November 17, 2015	December 27, 2019
Babcock & Wilcox Enterprises, Inc.	$19,500,000	June 17, 2015 to August 9, 2017	January 2, 2020
Flowers Foods, Inc.	$21,000,000	February 7, 2013 to August 10, 2016	January 3, 2020
Arcimoto, Inc.	$2,450,000	June 22, 2017 to September 21, 2017	January 6, 2020
Iconix Brand Group, Inc.	$6,000,000	February 22, 2012 to November 5, 2015	January 6, 2020
FX Instruments (Canada) (Antitrust)	$1,385,838	January 1, 2003 to December 31, 2013	January 15, 2020
American Realty Capital Properties, Inc.	$1,025,000,000	February 28, 2013 to October 29, 2014	January 23, 2020
Akorn, Inc.	$53,600,000	November 3, 2016 to January 8, 2019	January 24, 2020
EZCORP, Inc.	$4,875,000	January 28, 2014 to October 20, 2015	January 25, 2020
Puma Biotechnology, Inc.	$4.50/share	July 22, 2014 to May 29, 2015	January 28, 2020
Linkwell Corp	$6,000,000	re September 2014 Merger	February 4, 2020
Meridian Bioscience, Inc.	$2,100,000	March 24, 2016 to October 23, 2017	February 4, 2020
GSE Bonds (FTN)	$14,500,000	January 1, 2009 to January 1, 2019	February 5, 2020
Endo International plc	$82,500,000	November 30, 2012 to June 8, 2017	February 7, 2020
Rockwell Medical, Inc.	$3,700,000	November 8, 2017 to June 26, 2018	February 7, 2020
PixarBio Corporation (f/k/a BMP Holdings)	$750,000	December 11, 2015 to January 23, 2017	February 12, 2020
Dell, Inc.	$21,000,000	February 22, 2012 to May 22, 2012	February 14, 2020
SAIC, Inc.	$6,500,000	March 25, 2011 to June 2, 2011	February 14, 2020
Freshpet, Inc.	$10,100,000	April 1, 2015 to November 11, 2015	February 18, 2020
Altisource Residential Corporation	$15,500,000	December 24, 2012 to December 22, 2014	February 22, 2020
Euroyen-Based Derivatives (Antitrust)	$71,000,000	January 1, 2006 to June 30, 2011	March 3, 2020
TrueCar, Inc.	$28,250,000	February 16, 2017 to November 6, 2017	March 4, 2020
Liquid Holdings Group, Inc.	$4,062,500	July 26, 2013 to September 24, 2015	March 14, 2020
Namaste Technologies, Inc.	$2,750,000	November 29, 2017 to March 6, 2019	March 20, 2020
Trinity Industries, Inc.	$7,500,000	February 16, 2012 to April 24, 2015	March 25, 2020
LJM Preservation and Growth Fund	$1,225,000	February 28, 2015 to February 7, 2018	April 30, 2020

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

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