HAGENS BERMAN

Securities News

SUMMER 2014

Hagens Berman Reaches Settlements in Apple E-Book Antitrust Case, Awarding Millions for 23 States and Territories Represented by Firm

– STEVE BERMAN, MANAGING PARTNER

Honestly. When was the last time you actually read the Terms of Service page that Apple made you agree to before you are allowed to update the OS for your iPhone? Do you routinely hit "pause" on your DVR to read the small print that appears on ads that promise to make your debt smaller or your muscles bigger? Of course you don't – and I think it is safe to say that virtually no one does, except perhaps those writing what is essentially a contract. And that is what they are counting on – if they make the experience so stupefying, boring, tedious or simply impossible to accomplish, they've done their job.

It seems like some companies will go to extreme lengths to hide these schemes in the fine print – schemes that often leave consumers with the short end of the stick without even knowing it. Sometimes these plots end quickly, leaving a trail of news stories and a firestorm of outraged customers who pull their support.

Take General Mills, a company that's filled our cereal bowls with Cheerios and our freezers with Häagen-Dazs ice cream since its founding in 1866. In April of this year, the grocery giant revealed a dubious idea that had the potential to outright strip many consumers of their legal rights to form a class action against the company.

While we were all distracted by the other big "GM" automobile debacle, this GM – General Mills – quietly changed its online legal policy to include terms under which any dispute with the company would have to be decided through arbitration if consumers engage with the company's social media profiles and online communities – a change first reported by *The New York Times*.

When consumers are forced to face a large and powerful corporation in a legal dispute, it's never going to end pretty. This proposed "clickwrap" agreement momentarily put in motion by General Mills stipulated that when consumers *page 7 »*

HB's Securities News is a publication that includes recent and important events regarding investors' rights.

INSIDE THIS EDITION:

Timing is Everything: Hagens Berman's Settlement against Madoff's Banker, JPMorgan

– REED KATHREIN, PARTNER

"There is a tide in the affairs of men. Which, taken at the flood, leads on to fortune. Omitted, all the voyage of their life is bound in shallows and miseries… We must take the current when it serves or lose our ventures."

It isn't very common when a quote from The Bard relates directly to legal issues, but the quote from Brutus in Shakespeare's *Julius Caesar* is right on point here. What perhaps the most famous literary regicide is telling his co-conspirator is, effectively, timing is everything. In the play, they are debating whether they have the military strength to bring the battle to their enemy.

There are many parallels to their conversation with our recent decision to settle our case against Bernie Madoff's banker, JPMorgan.

Like Brutus, we evaluated the risk of joining the battle. In litigation, as in war, there are many unknowns beyond the party's control. In the legal realm, variables such as the court's *page 4 »*

SECURITIES TEAM

STEVE BERMAN
Managing Partner

Steve Berman represents consumers, investors and employees in large, complex litigation held in state and federal courts. Berman's trial experience has earned him significant recognition and led *The National Law Journal* to name him one of the 100 most powerful lawyers in the nation, and to repeatedly name Hagens Berman one of the top 10 plaintiffs' firms in the country.

PETER BORKON
Partner

Mr. Borkon is a partner at Hagens Berman's Berkeley office where he has worked since 2007. Since 2000, his practice has been focused on complex civil litigation, particularly securities and antitrust class actions and shareholder derivative suits. He has served as an Adjunct Professor at the University of California Hastings College of the Law and is trained to serve as a Judge Pro Tem in San Mateo County.

REED KATHREIN
Partner

Mr. Kathrein is a partner at Hagens Berman's Berkeley office. After 11 years defending corporations, he devoted his career to prosecuting class-action securities litigation and securities cases on behalf of individual and institutional investors. He has litigated over 100 securities fraud class actions. He worked behind the scenes in shaping the Private Securities Litigation Reform Act, the Securities Litigation Uniform Standards Act and the Sarbanes-Oxley Act.

Fasten Your Seatbelts, Supreme Court Creating a Bumpy Ride. ...Or, Is It?

– PETER BORKON, PARTNER

If you stay abreast of the most recent Supreme Court news, you'd think that securities-fraud class actions were in grave danger. Every so often, authorities posit that the Court's next decision will bring a new way of life to securities class actions, potentially throwing the practice area into a tailspin. While the Court's decisions could heavily impact litigation, let's unpack why those who are waiting for a disastrous end to securities cases are wasting their time waiting for Godot.

In its last several terms, the U.S. Supreme Court has taken unprecedented interest in cases related to securities laws and, more specifically, securities-fraud class actions. Each time the Supreme Court agrees to hear another securities-fraud class-action case, practitioners on both sides of the case begin to wring their hands over whether the Court's decision will dramatically alter or eliminate the field.

In recent terms, the Court heard two such cases: *Amgen* and *Halliburton I* – both of which were feared to end investors' securities class actions, and both of which instead reaffirmed the validity and importance of such cases. As Mr. Kathrein points out in his article on the next page, the Court will likely issue its *Halliburton II* decision expounding upon the continued use of the fraud on the market theory in June 2014. Looking forward, the Court has also agreed to hear two new cases, *Omnicare* and *Indymac*, which again have the potential to alter the litigation protections for investors.

In *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, the Court will grapple with the pleading requirements for stating a claim under Section 11 of the Securities Act of 1933. The issue the Court will address is whether a plaintiff must allege that a defendant's statement of opinion is "untrue" because the statement is objectively wrong, or if the plaintiff must also allege that the statement is subjectively false – requiring allegations that the defendant's actual opinion is different from the one expressed – in order to state a Section 11 violation.

In other words, can you sue someone for saying something that was false when stated or must the speaker also know the words are false when the words are spoken?

The Second, Third and Ninth Circuit Courts of appeal all follow the subjective falsity standard, but in *Omnicare*, the Sixth Circuit followed the objective falsity standard. Interestingly, that decision appears to contradict even the *page 6 »*

Is Your Fund Prepared for Halliburton?

The Supreme Court is likely to rule very soon on arguments by Halliburton to eliminate the Fraud on the Market Theory, raising the importance of preserving proof of reliance

– REED KATHREIN, PARTNER

Three years ago, the United States Supreme Court threw out the ability of U.S. investors to sue foreign fraudsters in the U.S. in the *Morrison v. National Australia Bank* litigation. As a result, investors who have been defrauded by purchases of foreign traded stocks must litigate abroad – a proposition often too expensive, complex and risky to warrant active involvement.

Now, even class actions against U.S. fraudsters could be in trouble. On March 5, 2014, the Supreme Court heard arguments in *Halliburton Co. et al. v. Erica P. John Fund* on whether securities laws require each damaged investor to prove that they read or heard the fraudulent statement.

Regardless of the result, Halliburton should remind investors to review their investment processes and procedures for individual or opt-out litigation.

Specifically, the issue argued before the Supreme Court was whether the "fraud on the market" doctrine, adopted by the Supreme Court more than 25 years ago in *Basic, Inc. v. Levinson*, is based on sound economics, and hence, whether it should still be used by the Court to presume reliance by each individual investor. The doctrine assumes, "an efficient market will reflect all publicly available information about a company; accordingly, a buyer of the security may be presumed to have relied on that information in purchasing the security." Therefore the courts "presume reliance" on this public information, where an efficient market for a stock is shown.

Halliburton argued to the Supreme Court that the "efficient market" theory has been discredited and therefore, the "fraud on the market doctrine" should be thrown out. None of the Justices, however, seemed wholly supportive of Halliburton's position. Rather, the Justices seemed to signal an interest in adopting an approach – suggested by two law professors – requiring proof that the misrepresentation distorted the price of the stock. Plaintiffs already commonly submit such proof with event studies at the merits stage of a case for purposes of determining damages. If adopted to replace proof of an efficient market, the issue becomes whether the Supreme Court might favor requiring such studies at the class certification stage. Given that the Supreme Court held just last year that materiality of a misrepresentation was not an issue to be decided at the class certification stage (*Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*), such an outcome would be surprising.

There remains the possibility of at least three outcomes:

1. The Court does nothing to change the law, and proof of an efficient market remains an issue at the class certification stage;
2. The Court throws out the efficient market theory, and decides that plaintiffs maintain the burden of proving a price impact. Today that must be shown at the merits stage, but five Justices may decide it should be shown, at least to some degree, at the class certification stage; or
3. The Court rejects completely the "fraud on the market" theory and kills securities-fraud class actions altogether.

The last scenario is unlikely. At most, two or three Justices would support such an outcome. Even Halliburton did not press for that outcome in oral argument. Regardless, the Halliburton case should remind investors to review their investment processes and procedures and be prepared for any outcome.

What options will remain available to funds that find themselves with investment losses from securities fraud?

If the Supreme Court does nothing, investors are reminded to review their opt-out decision processes and procedures.

If the Supreme Court requires proof of stock price impact at the class certification stage, little changes, but cases may be more costly at the front-end, with the possibility of being thrown out sooner.

In the worst case scenario, there will no longer be class actions for securities fraud. That means investors need to consider factors when deciding whether or not to opt-out of a class action to pursue an individual case.

In the latter two scenarios, investors will have to ask themselves the following questions:

Is it worth the time? Is it worth the cost? What are the prospects of an individual recovery? Are there others with whom the investor can join to take advantage of economies of scale? Are there broader legal theories or remedies that can be taken advantage of other than the federal securities laws? Should the case be brought in state or federal court?

Even more importantly, if the "fraud on the market" theory is thrown out, investors will have to prove individual reliance on the company's misstatements. That may be difficult, if not impossible, for public funds. Institutional investor clients often employ passive investment management, indexing or technical strategies. None of these strategies involve review of the actual statements made by the company. Even when they do purchase individual stocks based upon an analysis of that stock, institutional investors rarely keep track of everything they have *page 8 »*

Settlement against Madoff's Banker, JPMorgan

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interpretation of a particular law, or how it might change in a way adverse or favorable to your position come into play.

A good rule of thumb is to time your settlement negotiations when significant uncertainty remains regarding the strength of each party's position. And if the U.S. Supreme Court is reviewing an issue critical to your case, it's best to negotiate before their ruling is issued. Hagens Berman recently made that decision correctly and successfully.

In January 2014, Hagens Berman settled a class-action lawsuit for $218 million against JPMorgan Chase & Co. on behalf of direct investors in the Bernard Madoff scandal. The settlement was part of a larger resolution of Madoff-related litigation against JPMorgan involving simultaneous, separately negotiated settlements, which will total $2.243 billion and will benefit all victims who have net losses from Madoff's Ponzi scheme.

The suit alleged that JPMorgan — Madoff's bank for 20 years — was complicit in hiding Madoff's scheme because it ignored evidence showing that money was moving between Madoff and his investors and not to his purported investment schemes.

Hagens Berman stepped in when a federal judge dismissed claims by Madoff trustee Irving Picard against JPMorgan and UBS AG, saying that he could not sue for claims on behalf of customers of Bernard L. Madoff Investment Securities LLC.

To avoid the pleading standards of the federal securities laws, which would have required plaintiffs to plead facts showing that JPMorgan knew of the fraud or was grossly reckless in not knowing, Hagens Berman added state law claims which included breach of fiduciary duty and aiding and abetting breach of fiduciary duty.

Generally, defendants argue that such claims are precluded by the Securities Litigation Uniform Standards Act (SLUSA) since they are claims, "in connection with the purchase or sale of a security" traded on a U.S. stock exchange. Some district court judges had accepted this argument in other Madoff-related cases, but in another Ponzi scheme case, the U.S. Supreme Court was reviewing similar arguments that had been rejected by the Fifth Circuit.

Hagens Berman persuaded the district court to wait for the Supreme Court's decision before ruling. At the same time the U.S. Supreme Court was reviewing the Second Circuit's affirmation of the district court's dismissal of the trustee's standing to bring claims.

JPMorgan came to the negotiating table. It knew that there was a strong likelihood that either Hagens Berman or the trustee would prevail, and was faced with separate action by the Department of Justice over failing to comply with banking regulations, which could have uncovered the Madoff scheme. While negotiations were conducted separately, each party knew approximately the status of the other party's negotiations and likely the total package. The settlements, concluded in January 2014, include the settlement for the class in the amount of $218 million, the SIPA Trustee's Avoidance Action settlement in the amount of $325 million and a resolution with the U.S. Attorney's Office for the Southern District of New York that includes a civil forfeiture in the amount of $1.7 billion. The payments by JPMorgan in connection with these agreements will total $2.243 billion.

Ultimately, the U.S. Supreme Court appeared to rule in Hagens Berman's favor, under *Chadbourne et. al. v. Troice*, holding on Feb. 26, 2014, that SLUSA did not preclude plaintiffs' state-law class actions contending that the defendants assisted in perpetrating a Ponzi scheme by falsely representing that uncovered securities purchased by plaintiffs were backed by covered securities.

But on May 28, 2014, the Second Circuit held in *In re Herald Primeo and Thema* that the Madoff Ponzi scheme was distinguishable from the Stanford Ponzi scheme in *Chadbourne v. Troice*.

The Second Circuit's analysis is not without its critics. In *Chadbourne v. Troice*, investors thought they were purchasing certificates of deposits from Stanford Securities. In *Herald Primeo*, (the Madoff case) investors handed their money to feeder funds for investment purposes, sometimes not even knowing how their money was supposedly being invested. The uncontested fact is that there were no sales or purchases of "covered securities" by anyone in either case.

In fact, just prior to *Herald Primeo*, a district court judge found that under *Chadbourne v. Troice* the SLUSA did not preclude state law claims for the Madoff Ponzi scheme, reversing his earlier opinions. *In Spectrum Select, L.P. v. Tremont Group Holdings, Inc.*, Judge Griesa stated that under the Supreme Court's decision, "the only 'connection' that matters under SLUSA was whether the plaintiffs themselves bought or sold 'an ownership interest' covered securities." The Tremont court reconsidered its prior order, observing that it had not "really analyzed" the "crucial issue" of whether the plaintiffs had "an ownership interest" in a "covered security."

It is almost certain that a petition for further hearings will be filed, or that plaintiffs in that case will seek U.S. Supreme Court review. However, if Hagens Berman had not settled when it did, the district court would have been bound by this decision to dismiss their case. And then it would have likely been years to find out if the Second Circuit was correct.

Sometimes timing *is* everything! ■

FIRM NEWS

Hagens Berman Secures $60 Million in Settlements against NCAA and Electronic Arts in Likeness Cases, Takes on Scholarship Fairness

The firm recently secured $60 million in settlements for student-athletes whose likenesses, images and representations had been improperly and illegally used by video gaming giant Electronic Arts and the National Collegiate Athletic Association, marking the first time that NCAA student-athletes have been paid for their likenesses.

Hagens Berman successfully upheld the rights of these student-athletes against Electronic Arts and the NCAA and expects the settlement amounts from EA and the NCAA to be approved in July.

Managing partner, Steve Berman, hopes that the settlement will mark a change in the way that the NCAA treats players and manages its relationship with student-athletes. The firm is also in the process of litigating on behalf of student-athletes in regards to fair valuation of athletic scholarships from the NCAA.

Hagens Berman is again taking on the national sports-governing body along with most powerful members, including the Pac-12, Big Ten, Big-12 as well as the SEC and ACC, claiming these entities have agreed in violation of national antitrust laws to cap the value of athletic scholarships, arguing that they are below the actual cost of attending school, and far below what the free market would bear.

The firm is committed to ensuring that student-athletes are fairly supplemented for their time as players at NCAA universities and believes that the uneven distribution of compensation to student-athletes compared to coach salaries and school revenues is unjust and should be altered. ■

Hagens Berman Attorneys Triumph over Motion to Dismiss Securities Class Action against Life Partners Holdings Inc.

In May, a Texas federal court ruled in favor of investors of Life Partners Holdings Inc. (NASDAQ GS: LPHI), continuing a securities class-action against the company, brought on by attorneys at Hagens Berman. The 56-page ruling stated that plaintiffs had sufficiently detailed claims that Life Partners Holdings anchored its multimillion-dollar life insurance investment business on the questionable predictions of one unqualified doctor – something the Life Partners knew was a risk to its investors.

U.S. District Judge Alia Moses stated that the complaint issued by Hagens Berman is "more than adequate" to defeat the motion to dismiss, adding, "They create a strong inference of scienter, demonstrating that the defendants knew that their statements to the public were materially misleading."

The suit, which Hagens Berman initially filed on Jan. 25, 2011, states that the company used the doctor's predictions to estimate life expectancies of insured individuals – a fraudulent process that produced an overly positive view of the company's revenue to the U.S. Securities and Exchange Commission and shareholders.

Hagens Berman's investigation showed that this doctor was using an "unrealistic" approach that produced inaccurately short life expectancies. Life Partners Holdings engages in a secondary market for life insurance, commonly called life settlements, and helps investors buy life insurance policies of terminally ill patients and the elderly at a discount of the policies' face value. ■

Hagens Berman Wins $325 Million Proposed Settlement with Pfizer for Third-Party Payors of Neurontin

The firm recently announced a $325 million proposed settlement for third-party payors (TPPs) of the drug Neurontin in a class-action case against Pfizer and its subsidiary Parke-Davis, accusing the companies of a fraudulent scheme to market and sell Neurontin for off-label uses for which the drug is not FDA approved or medically efficacious.

Hagens Berman fought in this complex litigation for more than 10 years and is pleased to see the class of purchasers made whole, adding to the firm's impressive list of Big Pharma wins.

The complaint alleges that in 1995, Parke-Davis decided it did not want to undertake the clinical trials required by the FDA to approve Neurontin's new uses, and instead created an illegal promotional campaign to get more patients to use the drug. Neurontin is approved for use as adjunctive therapy for adult epilepsy and for the treatment of post-herpetic neuralgia.

The off-label promotion scheme remained hidden until a whistleblower complaint filed by a previous Parke-Davis employee was fully unsealed by the United States District Court for the District of Massachusetts in May of 2002.

Pharma giant, Pfizer admitted during the investigation that upwards of 80 percent of Neurontin sales were for uses for which the drug has never been approved. ■

UPCOMING EVENTS

National Association of Securities Professionals
25th Annual Pension & Financial Services Conference
June 23-25
San Francisco, CA

National Association of Public Pension Attorneys
Legal Education Conference
June 25-27
Nashville, TN

National Association of Government Defined Contribution Administrators
Annual Conference
September 14-17
San Antonio, TX

20th Annual Alpha Hedge West Conference
September 21-23
San Francisco, CA

Georgia Association of Public Pension Trustees
5th Annual Conference
September 23-26
Pine Mountain, GA

Council of Institutional Investors Fall Conference
September 29-October 1
Los Angeles, CA

Illinois Public Pension Fund Association
Midwest Pension Conference
September 30-October 3
Lake Geneva, WI

National Council on Teacher Retirement
93rd Annual Conference
October 11-15
Indianapolis, IN

International Foundation of Employee Benefit Plans
60th U.S. Annual Employee Benefits Conference
October 12-15
Boston, MA
Come see us at booth 842!

National Conference on Public Employee Retirement Systems
Public Safety Employees Pension & Benefits Conference
October 26-29
New Orleans, LA

State Association of County Retirement Systems
Fall Conference
November 11-14
Monterey, CA

Fasten Your Seatbelts, Supreme Court Creating a Bumpy Ride. ...Or, Is It?

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Sixth Circuit's prior holding in *Mayer v. Mylod* where the Sixth Circuit expressly followed the subjective falsity standard. For investors, the potential that the Supreme Court may inject some level of intent into the pleading standards for Section 11 cases could limit the scope of cases available for those who purchase shares based on statements contained in a Registration Statement that turn out to be false.

IndyMac has even greater potential to close the avenues for relief available to harmed investors. This case will tackle how long investors have to file their claim. For 40 years, investors have relied on the holding of *American Pipe*, where the Court allowed tolling of the statute of limitations to protect the interests of investors with securities fraud claims. *American Pipe* allowed investors to take a wait-and-see approach when deciding when and whether to participate in a securities class-action settlement or to opt out and pursue an individual case.

Well, the Second Circuit eliminated that possibility in *IndyMac*. The Second Circuit held that although *American Pipe* calls for tolling of the statute of limitation, it does not toll the statute of repose. The circuit court reasoned that the statute of repose is an absolute bar that cannot be tolled and will continue to run until an investor asserts their own individual claim. Because filing of a class action no longer tolls the statue of repose, now in the Second Circuit, investors must decide at the front of a case whether to intervene in a class action by filing their own protective lawsuits to preserve their claims and ability to seek recovery.

Historically, when a securities class action was filed, investors could choose to act as a lead plaintiff or not. If they did not, another investor would prosecute the case and if the case was successful all investors would get to claim their portion of the recovery or opt-out and seek their own remedy at a later date. Now, every time a securities class action is filed, investors will need to assess very early whether to intervene or file their own case to avoid the potential that the three-year statue of repose will run, thereby foreclosing any action. The potential that large numbers of place-holding lawsuits will flood the courts is a very real possibility within the Second Circuit.

Although these cases seem dire for investors, recent Supreme Court decisions have not resulted in a dramatically altered landscape. The Court has instead reaffirmed and validated those investor protections that have been in place for 80 years.

The impending *Halliburton II* decision this term and *Omnicare* and *IndyMac* in the next Supreme Court term will arrive, and we remain hopeful that investors will continue to be afforded the protections needed to ensure a fair, reliable and transparent market. ■

Settlement in Apple E-Book Antitrust Case

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visit the General Mills website to download coupons, discounts or other offerings, they would give up this right.

Outcry from the controversial change made headlines and reverberated in online comment boards until General Mills reversed the agreement shortly after it surfaced.

While this transient scheme turned into a noteworthy and largely discussed issue, other schemes are not so notorious and bring with them consequences to consumers that are broad reaching, damaging and unforeseen – that's when things really get ugly.

In the price-fixing antitrust case against Apple and the Big Five Publishers – Penguin Group (USA) Inc.; Hachette Book Group Inc.; HarperCollins Publishers LLC; Simon & Schuster Inc.; and Holtzbrinck Publishers, LLC, d/b/a Macmillan – consumers weren't just up against one entity but six altogether, conspiring against the betterment of the economy and the purses of the purchaser.

This story is really about two sets of business interests coming together at the expense of consumers – publishers, who are scrambling to save their business model in the face of innovation, and a media giant – Apple – trying to crush its competition.

The Big Five publishers joined with Apple in a marriage of financial convenience – the publishers found a way to roll back pricing to the pre-e-book days, and Apple found a way to crush a competitor, all in one fell swoop.

Some argued that it could have all been a wild coincidence. Five publishers all somehow agreed to raise prices at the same time and agreed to grant Apple a guarantee that it will always get the lowest price, while at the same time Apple announced the iPad as a competitor to the Kindle? I don't think so.

The results were abundantly obvious – during litigation it was cheaper in some instances to buy a hardcover book that an e-book. The greed and market manipulation behind this scheme forced consumers to pay tens of millions of dollars more for their favorite titles.

> *Consumers weren't just up against one entity but six altogether, conspiring against the betterment of the economy and the purses of the purchaser.*

Luckily for e-book purchasers in 23 states and territories, this particular instance of plotting against consumers and price-fixing did not involve a stipulation in the fine print to stop a class action, but did come with its share of rebuttal and dispute from Apple and the publishers.

Apple was the last entity to resolve in the settlement, first attempting to have the case dismissed in August of 2011.

Following this motion, it took an unusually short period of time before the $166 million dollar settlement was announced – $66 million of which was awarded from litigation through Hagens Berman. A second trial to determine the amount of damages Apple must pay will be scheduled to occur this summer. The settlement amount also returned a high percentage of losses to consumers.

Given the price fluctuations, it's clear that these companies colluded and were involved in an incredibly complex agreement to manipulate the price of e-books, fix prices and push Amazon out of the e-book market.

Whether it's an edit to a long-standing food giant's fine print, as was the case with General Mills – or a drawn-out and multifaceted involvement between six entities across industries, companies will always be seeking ways in which they can skim a little off the top, without the consumer noticing.

We can only hope that successful and timely litigation such as this will hold companies to a higher standard and make them think twice whenever they decide to quietly edit their consumer agreements. ■

New Actions

Company	Exch:Ticker	Class Period	Court	Lead Plaintiff Deadline
TelexFree, Inc.	Private	01/01/12 - 05/14/14	D. MA	7/14/14
Tellabs, Inc.		10/21/13 - 10/21/13	N.D. IL	7/14/14
Insys Therapeutics, Inc.		05/01/13 - 05/08/14	D. AZ	7/14/14
Blucora, Inc.		11/05/13 - 02/20/14	W.D. WA	7/14/14
Safeway Inc.	NYSE: SWY	03/06/14 - 03/06/14	N.D. CA	7/14/14
Doral Financial Corporation	NYSE: DRL	04/02/12 - 05/01/14	D. PR	7/14/14
Ply Gem Holdings, Inc.	NYSE: PGEM	05/20/13 - 05/19/14	S.D. NY	7/18/14
Biozoom, Inc.	OTC BB: BIZM	05/16/13 - 06/25/13	N.D. OH	7/21/14
Dell Inc.		02/22/12 - 05/22/12	S.D. NY	7/21/14
Powersecure International, Inc.	NYSE: POWR	03/10/14 - 05/07/14	E.D. NC	7/22/14
Provectus Biopharmaceuticals, Inc.	NYSE: PVCT	12/17/13 - 05/22/14	M.D. TN	7/28/14
Vertex Pharmaceuticals Inc.		05/07/12 - 05/29/12	D. MA	7/28/14
Higher One Holdings, Inc.	NYSE: ONE	08/07/12 - 05/12/14	D. CT	7/28/14
Prospect Capital Corporation		09/14/09 - 05/06/14	S.D. NY	7/28/14
Infoblox, Inc.	NYSE: BLOX	09/05/13 - 05/29/14	N.D. CA	7/29/14
Covisint Corporation		09/23/13 - 05/30/14	S.D. NY	7/29/14
Regional Management Corporation	NYSE: RM	09/20/13 - 05/30/14	S.D. NY	7/29/14
Chelsea Therapeutics International, Ltd.		05/08/14 - 05/08/14	D. DE	8/1/14
China Ceramics Co., Ltd.		03/30/12 - 05/01/14	S.D. NY	8/5/14
OvaScience, Inc.		02/25/13 - 09/10/13	D. MA	8/5/14
Annie's, Inc.	NYSE: BNNY	08/08/13 - 06/03/14	N.D. CA	8/11/14
Ocean Power Technologies, Inc.		01/14/14 - 06/09/14	D. NJ	8/12/14
Hertz Global Holdings, Inc.	NYSE: HTZ	02/22/12 - 06/06/14	D. NJ	8/15/14
Forest Oil Corporation	NYSE: FST	05/06/14 - 05/06/14	D. CO	8/15/14

If you have experienced substantial losses and wish to move the court for lead plaintiff status, you must do so before the deadlines listed here.

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Is Your Fund Prepared for Halliburton?

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read. Therefore, if institutional investors want to maintain the ability to hold fraudsters accountable, resources will have to be devoted to capturing the information relied upon in making the stock purchase.

State common law and statutory claims, filed either in federal or state court, will also be available to some investors and may become the preferential sources of relief. The Securities Litigation Uniform Standards Act of 1998 (SLUSA) which precludes the use of state laws for most investors, will still offer alternative causes of action to:

- State Pension Funds – defined by statute as, "a pension plan established or maintained for employees of a state or political subdivision, agency or instrumentality," may still bring individual actions or class actions with other State Pension Funds if provided for under state law;
- Suits brought by fewer than 50 investors seeking the same relief under state law; and
- Private-party claims brought under the law of the state in which the issuer is incorporated or organized.

Irrespective of what happens in *Halliburton*, there will still be class actions for fraud that occurs during a stock offering under Section 11 of the Securities Act. Under Section 11, reliance on the registration statement is an element of the claim only if the stock was purchased more than 12 months after the offering and after an earnings statement has been made available to investors.

In the long run, securities litigation could become Balkanized. Fund trustees and other institutional investors will need to spend more time analyzing claims, consulting counsel, and networking with other institutional investors. Large investors will band together in different states as in current opt-out litigation. Investors with small damages will be left out, as attorneys will not be able to afford to litigate their claims. ■

Claim Form & Opt Out Deadlines

Opt-Out Deadline	Claim Form Deadline	Company	Ticker	Class Period	Settlement Amount
6/18/14	8/8/14	Chemed Corp.	CHE	02/15/10 - 05/02/13	$6 M
6/23/14	8/8/14	First Regional Bancorp	FRGB	01/30/07 - 01/29/10	$5.50 M
7/2/14	8/28/14	Oppenheimer AMT-FREE Municipals Fund	OMFCX	05/13/06 - 10/21/08	$17.11 M
7/2/14	8/28/14	Oppenheimer Rochester National Municipals Fund	ORNAX, ...	03/13/06 - 10/21/08	$26.85 M
7/2/14	8/28/14	Oppenheimer Rochester Fund Municipals	RMUBX, ...	02/26/06 - 10/21/08	$33.59 M
7/2/14	8/28/14	Oppenheimer New Jersey Municipal Fund	ONJBX	04/24/06 - 10/21/08	$3.37 M
7/2/14	8/28/14	Oppenheimer AMT-Free New York Municipal Fund		05/21/06 - 10/21/08	$4.24 M
7/2/14	8/28/14	Oppenheimer Pennsylvania Municipal Fund	OPABX, ...	09/27/06 - 11/26/08	$4.34 M
7/3/14	8/18/14	Kosmos Energy Ltd.	KOS	05/09/11 - 01/10/12	$10.20 M
7/3/14	8/18/14	Advanta Corp.	ADVBQ, ...	10/16/06 - 01/30/08	$13.25 M
7/3/14	9/6/14	J.P. Morgan Acceptance Corporation (Mortgage Pass-Through Certificates and Asset-Backed Pass-Through		07/29/05 - 07/24/09	$280 M
7/7/14	8/13/14	Oclaro, Inc.	OCLR	05/06/10 - 10/28/10	$3.70 M
7/7/14	9/2/14	American Apparel, Inc.	APP	11/28/07 - 08/17/10	$4.80 M
7/9/14	7/9/14	China Green Agriculture, Inc.	CGA	05/12/09 - 01/04/11	$2.50 M
7/10/14	9/8/14	GMX Resources Inc.	GMXR	05/13/09 - 05/12/11	$2.70 M
7/15/14	7/21/14	Hospira, Inc.	HSP	02/04/10 - 10/17/11	$60 M
7/16/14	8/1/14	Swisher Hygiene Inc.	SWSH	03/01/11 - 03/28/12	$5.50 M
7/17/14	8/1/14	Focus Media Holding Limited	FMCN	11/20/07 - 11/21/11	$3.70 M
7/24/14	7/24/14	Chanticleer Holdings, Inc.	HOTR	06/18/12 - 02/19/13	$850 K
8/5/14	8/5/14	China Valves Technology, Inc.	CVVT	01/12/10 - 01/13/11	$1.50 M
8/18/14	8/18/14	City of Monticello Telecommunications Revenue Bonds Series 2008		06/19/08 - 05/31/12	$5.75 M
8/22/14	8/31/14	Austin Capital Management Ltd. (Madoff Investments)		01/02/05 - 12/11/08	$6.85 M
8/25/14	9/5/14	FindWhat.com (MIVA)	FWHT	02/23/05 - 05/04/05	$2.40 M
8/25/14	9/16/14	Hewlett-Packard Company	HPQ	11/22/10 - 08/18/11	$57 M
-	7/3/14	Massey Energy Company	MEE	02/01/08 - 07/27/10	$265 M
-	7/7/14	Genoptix, Inc.	GXDX	07/31/09 - 06/16/10	$7.70 M
-	7/9/14	CNinsure Inc.	CISG	03/02/10 - 11/21/11	$6.62 M
-	7/11/14	UniTek Global Services, Inc.	UNTK	05/18/11 - 04/12/13	$1.55 M
-	7/20/14	Oppenheimer Champion and Oppenheimer Core (Classes A, B, C, N or Y)		01/28/08 - 12/31/08	$35.37 M
-	7/31/14	Yuhe International, Inc.	YUII	12/31/09 - 06/17/11	$2.70 M
-	8/12/14	Orchard Enterprises, Inc.		03/15/10 - 07/29/10	$10.72 M
-	8/18/14	Heckmann Corporation	HEK	05/20/08 - 05/08/09	$27 M
-	8/19/14	Weatherford International Ltd.	WFT	04/25/07 - 03/01/11	$52.50 M
-	9/12/14	Epicor Software Corporation	EPIC	05/16/11 - 05/16/11	$18 M
-	9/23/14	Advanta (RediReserve Notes)	ADVBQ, ...	02/28/08 - 11/08/09	$3.55 M

If you wish to consider opting out of a settlement, or have questions concerning filing claim forms in a case that has settled, contact us today.

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Securities Litigation Filing and Settlement Trends

– REED KATHREIN, PARTNER

This first half year of 2014, with 59 securities fraud class actions having been filed, puts the year on track with 1996 and 2006 when only 110 and 120 suits were filed—the two lowest years as tracked by Stanford Law School and Cornerstone Research. To put the number in perspective, last year saw 166 suits and 2008, right after the financial crisis, saw 223 suits.

The last figures available indicate that, for 2013, the median filing lag—days from the end of the class period or stock drop, to the first filing—has dropped to 15 days. This is down from the 1997-2012 median lag of 26 days—a disturbing drop to us as it means more firms are racing once again to the courthouse steps without time for a deep investigation. We believe the result will be more suits will be dismissed.

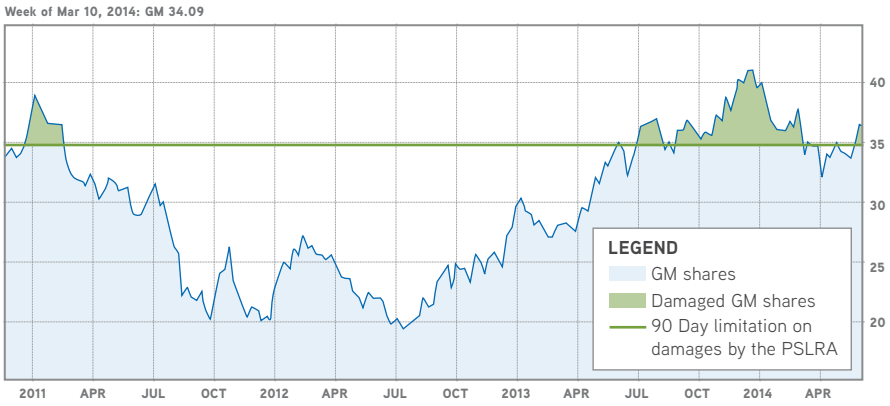
Other trends that emerged in 2013 were the increase of filings relating to the new upsurge in Initial Public Offerings, and the filing of suits in the wake of investigative or regulatory actions. This trend has continued into 2014. While we agree that IPO's that fail quickly are a strong indication that management foresaw that sales were cresting, we are skeptical of suits filed immediately upon any announcement of a government investigation. More often than not, these investigations end with no finding or wrongdoing, and we, again, are loath to recommend that clients get involved in such cases within 60 days.

In 2014 we continue to note that as stocks are still reaching record highs, even where we may see a meritorious lawsuit, the PSLRA's 90-day look back will limit recoverable damages to the price paid minus the mean trading price of the stock for 90-days after the revelation of the fraud. That means that there are often little recoverable damages when stock prices are rising generally.

A good example is the recent suit against General Motors. Filed on March 3, 2014 for a class period of November 17, 2010 to March 10, 2014, GM's stock dropped almost $6 per share as a result of disclosures of the long standing ignition switch hazard. As a result of GM's rising share price, only those shares—purchased above $34.78 have recoverable damages. Thus, even if GM's executive management intentionally hid the ignition switch problem, relatively very few purchasers of GM stock will have claims.

Finally, on the settlement front, 2013 had the highest total approved settlements over the preceding six years as the financial crisis cases came home—almost $5 billion—with six mega settlements over $100 million and one over $2 billion. Yet 2013 does not compare to the mega settlements of 2005-2007. In those years settlements totaled $10, $19 and $8 billion respectively. ■

Timing of Damaged GM Shares



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