

Circuit Court Decisions Addressing Class Certification

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Second Circuit: Courts Must Consider Price Impact Evidence at the Class Certification Stage

On January 12, 2018, the Second Circuit vacated class certification in a securities fraud action based, *inter alia*, on its determination that the district court “erred in declining to consider” defendants’ price impact evidence at the class certification stage. [Arkansas Teachers Ret. Sys. v. Goldman Sachs Grp.](#), 879 F.3d 474 (2d Cir. 2018) (Wesley, J.). The Second Circuit found the district court erroneously “construed this evidence as an inappropriate truth on the market defense or as evidence of the statements’ lack of materiality, neither of which the court thought it could consider at the class certification stage.”

The Second Circuit explained that “[t]he ‘truth on the market’ defense attacks the timing of the plaintiffs’ purchase of shares” on the theory that “the market was already aware of the truth regarding defendants’ misrepresentations at the time the class members purchased their shares.” Here, it was “undisputed that plaintiffs purchased their shares after the misstatements were made but before the truth was revealed.” The Second Circuit found that “defendants did not present a ‘truth on the market’ defense” but instead presented evidence that alleged “conflicts of interest ‘did not actually affect the stock’s market price.’” *Id.* (quoting *Halliburton Co. v. Erica P. John Fund*, 134 S. Ct. 2398 (2014)).

The Second Circuit also distinguished price impact from materiality. The court observed that while “price impact touches on materiality, which is not an appropriate consideration at the class certification stage, it differs from materiality” insofar as price impact concerns “the effect of a misrepresentation on a stock price.” The court explained that “[w]hether a misrepresentation was reflected in the market price at the time of the transaction—whether it had price impact—is *Basic*’s fundamental premise. It ... has everything to do with the issue of predominance at the class certification stage.” *Id.* (quoting *Halliburton*, 134 S. Ct. 2398). The Second Circuit emphasized that if an alleged misrepresentation did not affect the stock price, there would be no basis for plaintiffs to assert that they indirectly relied on that misrepresentation through the market price. On remand, the district court found that defendants “failed to establish, by a preponderance of the evidence, that the alleged misstatements had no price impact.” *In re Goldman Sachs Grp. Sec Litig.*, 2018 WL 3854757 (S.D.N.Y. Aug. 14, 2018). Defendants have appealed.

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