

ALERTS AND UPDATES

Supreme Court Sets Stage for Skirmish on Price Impact and Securities Class Certification

June 10, 2011

In *Erica P. John Fund, Inc. v. Halliburton Co.*,¹ the U.S. Supreme Court reversed a Fifth Circuit decision that required a putative class of investors to prove loss causation in order to attain class certification. The Court rejected defendant Halliburton's argument that the Fifth Circuit's application of loss causation was in reality an analysis of whether the claimed misrepresentations impacted the price of Halliburton stock, saying that the Court assumed that the Fifth Circuit meant "loss causation" when it used the term "loss causation." The case was remanded to the Fifth Circuit for further proceedings consistent with the Supreme Court opinion, thus apparently allowing Halliburton to argue on remand that a showing of a lack of price impact rebutted the presumption of reliance on a misrepresentation, which is at the core of securities class certification. The Court expressly stated that "we need not, and do not, address any other question about Basic [the case that created the presumption of reliance²], its presumption, or how and when it may be rebutted."³

Analysis

Whether before the Fifth Circuit on remand or in some other case, the stage may be set for securities defendants to present evidence at the class certification stage that the claimed misrepresentation had no price impact. Defendants may then argue that such evidence effectively rebuts the presumption of reliance which assumes that the claimed misrepresentation had a price impact. (Indeed, this was the position taken by Duane Morris in its amicus brief for the American Institute of CPAs (AICPA) that it filed in the Supreme Court.) By not addressing fundamental questions now, the *Halliburton* decision may guarantee a rematch on a more focused record in the near future.

If the price impact argument were ultimately successful, it would become much more difficult to achieve class certification in many a securities action. In any case where a class is not certified, the claimed damages will likely be minimal and the settlement value small. The ultimate outcome of the question, which will likely be revisited by the Court in the near-term, would thus have a major effect on the viability of many putative securities class actions.

For Further Information

If you have any questions about the information addressed in this *Alert*, please contact [Anthony J. Costantini](#), [Robert L. Byer](#), [Susan Schwochau](#), any [member](#) of the [Securities Litigation Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Notes

1. *Erica P. John Fund, Inc. v. Halliburton Co.*, 2011 U.S. LEXIS 4181 (U.S. June 6, 2011).
2. *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988).
3. *Erica P. John Fund, Inc. v. Halliburton Co.* at *19.

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