
Second Circuit Clarifies Burden of Proof and Efficient Market Requirements in Denying Class Action Certification

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On October 14, 2008, the United States Court of Appeals for the Second Circuit clarified what it acknowledged to be "some confusion" in its prior decisions, holding that the preponderance of the evidence standard applies to proof that the requirements for class action certification under Rule 23 of the Federal Rules of Civil Procedure are met. In so doing, the Court of Appeals also made clear that in order to invoke the fraud-on-the-market presumption of reliance recognized in *Basic v. Levinson*, 485 U.S. 224 (1998), the proponent of the presumption must establish that the securities at issue traded in an "efficient" market.

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