

## Supreme Court Will Review Holding that Proof of Materiality Is Not Required For Class Certification in a Fraud-on-the-Market Action

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On June 11, 2012, the Supreme Court granted certiorari with respect to the unanimous decision of the Court of Appeals for the Ninth Circuit in *Connecticut Retirement Plans and Trust Funds v. Amgen, Inc., et al.* The Court certified two questions for review:

1. Whether, in a misrepresentation case under Securities and Exchange Commission Rule 10b-5, the district court must require proof of materiality before certifying a plaintiff class based on the fraud-on-the-market theory; and
2. Whether, in such a case, the district court must allow the defendant to present evidence rebutting the applicability of the fraud-on-the-market theory before certifying a plaintiff class based on that theory.

The Court of Appeals held in *Amgen* that “plaintiffs need not *prove* materiality to avail themselves of the fraud-on-the-market presumption of reliance at the class certification stage,” and that the district court had “correctly refused to consider Amgen’s truth-on-the-market defense” during the class certification process. It therefore affirmed the certification of the class under Rule 23(b)(3) of the Federal Rules of Civil Procedure.

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