
The Supreme Court Clarifies Standards for Rebutting Presumption of Reliance at Class Certification Stage in Securities Litigation

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To establish a securities fraud claim, plaintiffs must show they relied on the alleged misrepresentations or omissions that are the subject of the lawsuit. The individualized nature of that inquiry had the potential to pose a crippling hurdle to plaintiffs' efforts to certify a securities fraud class, because a plaintiff seeking to certify such a class typically must show that "questions of law or fact common to class members predominate over any questions affecting only individual members."

The Supreme Court of the United States addressed that issue in *Basic Inc. v. Levinson* and adopted the "fraud-on-the-market" theory. Under that theory, so long as the securities at issue trade in an efficient market, plaintiffs are entitled to a class-wide presumption of reliance. Defendants can rebut the presumption by "sever[ing] the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff or his decision to trade at a fair market price." In practice, however, courts tend to defer consideration of those issues until after class certification, because they also are relevant to merits issues such as materiality and loss causation, which the Supreme Court has held were not appropriately considered at class certification.

On June 21, 2021, the Supreme Court decided *Goldman Sachs Grp., Inc. v. Arkansas Tchr. Ret. Sys.*, 141 S. Ct. 1951 (2021) ("*Goldman v. Arkansas*"), which addressed questions about the standards for rebutting the Basic presumption. The Court held that (i) whether an alleged misrepresentation is generic, and therefore unlikely to affect price, is relevant at the class certification stage, even though it is also relevant to the merits issue of materiality and (ii) defendants seeking to rebut the Basic presumption have the ultimate burden of proof to show a lack of price impact at the class certification stage. While the Court clarified the standards for rebutting the Basic presumption, it did not substantially alter those standards, as some commentators had expected.

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