Securities Class Action Filings and Settlements

GIBSON DUNN

Filings
Note: This figure begins including state 1933 Act filings in the annual counts in 2010. Parallel class actions are only reflected as a single filing.
Disclosure Dollar Loss Index® (DDL Index®) 2005 – 2019

Note: This figure begins including DDL associated with state 1933 Act filings in 2010. DDL associated with parallel class actions are only counted once.
### Allegations Box Score—Core Federal Filings

<table>
<thead>
<tr>
<th>Allegations in Core Federal Filings</th>
<th>Percentage of Filings¹</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Rule 10b-5 Claims</td>
<td>92%</td>
</tr>
<tr>
<td>Section 11 Claims</td>
<td>16%</td>
</tr>
<tr>
<td>Section 12(2) Claims</td>
<td>9%</td>
</tr>
<tr>
<td>Misrepresentations in Financial Documents</td>
<td>99%</td>
</tr>
<tr>
<td>False Forward-Looking Statements</td>
<td>53%</td>
</tr>
<tr>
<td>Trading by Company Insiders</td>
<td>16%</td>
</tr>
<tr>
<td>Accounting Violations</td>
<td>38%</td>
</tr>
<tr>
<td>Announced Restatement⁴</td>
<td>12%</td>
</tr>
<tr>
<td>Internal Control Weaknesses⁵</td>
<td>26%</td>
</tr>
<tr>
<td>Announced Internal Control Weaknesses⁶</td>
<td>11%</td>
</tr>
<tr>
<td>Underwriter Defendant</td>
<td>12%</td>
</tr>
<tr>
<td>Auditor Defendant</td>
<td>1%</td>
</tr>
</tbody>
</table>

**Note:**
1. The percentages do not add to 100 percent because complaints may include multiple allegations.
2. Core federal filings are all federal securities class actions excluding those defined as M&A filings.
3. First identified complaint (FIC) includes allegations of U.S. GAAP violations or violations of other reporting standards such as IFRS. In some cases, plaintiff(s) may not have expressly referenced accounting GAAP violations; however, the allegations, if true, would represent accounting GAAP violations.
4. FIC includes allegations of GAAP violations and refers to an announcement during or subsequent to the class period that the company will restate, may restate, or has unreliable financial statements.
5. FIC includes allegations of internal control weaknesses over financial reporting.
6. FIC includes allegations of internal control weaknesses and refers to an announcement during or subsequent to the class period that the company has internal control weaknesses over financial reporting.
7. In each of 2018 and 2019 there was one filing with allegations against an auditor defendant.
Source: Securities Class Action Clearinghouse; Center for Research in Security Prices (CRSP)

Note:
1. Percentages are calculated by dividing the count of issuers listed on the NYSE or Nasdaq subject to filings by the number of companies listed on the NYSE or Nasdaq as of the beginning of the year.
2. Listed companies were identified by taking the count of listed securities at the beginning of each year and accounting for cross-listed companies or companies with more than one security traded on a given exchange. Securities were counted if they were classified as common stock or American Depository Receipts (ADRs) and listed on the NYSE or Nasdaq.
3. Percentages may not sum due to rounding.
4. This figure begins including issuers facing suits in state 1933 Act filings in 2010.

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Note:
1. Filings with missing sector information or infrequently used sectors may be excluded.
2. Sectors are based on the Bloomberg Industry Classification System.
Filings by Court Circuit
Core Federal Filings

- 1st Circuit
- 2nd Circuit
- 3rd Circuit
- 4th Circuit
- 5th Circuit
- 6th Circuit
- 7th Circuit
- 8th Circuit
- 9th Circuit
- 10th Circuit
- 11th Circuit
- D.C.

<table>
<thead>
<tr>
<th>Year</th>
<th>1st Circuit</th>
<th>2nd Circuit</th>
<th>3rd Circuit</th>
<th>4th Circuit</th>
<th>5th Circuit</th>
<th>6th Circuit</th>
<th>7th Circuit</th>
<th>8th Circuit</th>
<th>9th Circuit</th>
<th>10th Circuit</th>
<th>11th Circuit</th>
<th>D.C.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>6</td>
<td>103</td>
<td>28</td>
<td>7</td>
<td>13</td>
<td>11</td>
<td>8</td>
<td>2</td>
<td>52</td>
<td>6</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>6</td>
<td>71</td>
<td>26</td>
<td>3</td>
<td>11</td>
<td>4</td>
<td>13</td>
<td>3</td>
<td>69</td>
<td>6</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>10</td>
<td>75</td>
<td>35</td>
<td>7</td>
<td>8</td>
<td>7</td>
<td>4</td>
<td>7</td>
<td>45</td>
<td>7</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Average 1997–2018</td>
<td>9</td>
<td>50</td>
<td>17</td>
<td>6</td>
<td>11</td>
<td>8</td>
<td>8</td>
<td>6</td>
<td>48</td>
<td>6</td>
<td>14</td>
<td></td>
</tr>
</tbody>
</table>
### Heat Maps of S&P 500 Securities Litigation™
**Percent of Companies Subject to Core Federal Filings**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer Discretionary</td>
<td>5.3%</td>
<td>5.1%</td>
<td>3.8%</td>
<td>4.9%</td>
<td>8.4%</td>
<td>1.2%</td>
<td>0.0%</td>
<td>3.6%</td>
<td>8.5%</td>
<td>10.0%</td>
<td>3.1%</td>
</tr>
<tr>
<td>Consumer Staples</td>
<td>3.4%</td>
<td>0.0%</td>
<td>2.4%</td>
<td>2.4%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>5.0%</td>
<td>2.6%</td>
<td>2.7%</td>
<td>11.8%</td>
<td>12.1%</td>
</tr>
<tr>
<td>Energy/Materials</td>
<td>1.5%</td>
<td>4.3%</td>
<td>0.0%</td>
<td>2.7%</td>
<td>0.0%</td>
<td>1.3%</td>
<td>0.0%</td>
<td>4.5%</td>
<td>3.3%</td>
<td>1.8%</td>
<td>3.7%</td>
</tr>
<tr>
<td>Financials/Real Estate</td>
<td>8.0%</td>
<td>10.3%</td>
<td>1.2%</td>
<td>3.7%</td>
<td>0.0%</td>
<td>1.2%</td>
<td>1.2%</td>
<td>6.9%</td>
<td>3.3%</td>
<td>7.0%</td>
<td>2.0%</td>
</tr>
<tr>
<td>Health Care</td>
<td>8.8%</td>
<td>13.5%</td>
<td>2.0%</td>
<td>1.9%</td>
<td>5.7%</td>
<td>0.0%</td>
<td>1.9%</td>
<td>17.9%</td>
<td>8.3%</td>
<td>16.1%</td>
<td>12.9%</td>
</tr>
<tr>
<td>Industrials</td>
<td>3.8%</td>
<td>0.0%</td>
<td>1.7%</td>
<td>1.6%</td>
<td>0.0%</td>
<td>4.7%</td>
<td>0.0%</td>
<td>6.1%</td>
<td>8.7%</td>
<td>8.8%</td>
<td>10.1%</td>
</tr>
<tr>
<td>Telecommunications/Information</td>
<td>6.3%</td>
<td>2.4%</td>
<td>7.1%</td>
<td>3.8%</td>
<td>9.1%</td>
<td>0.0%</td>
<td>4.2%</td>
<td>6.8%</td>
<td>8.5%</td>
<td>12.7%</td>
<td>5.9%</td>
</tr>
<tr>
<td>Utilities</td>
<td>5.3%</td>
<td>0.0%</td>
<td>2.9%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>3.4%</td>
<td>3.4%</td>
<td>7.1%</td>
<td>7.1%</td>
<td>6.9%</td>
</tr>
<tr>
<td><strong>All S&amp;P 500 Companies</strong></td>
<td>5.5%</td>
<td>4.8%</td>
<td>2.8%</td>
<td>3.0%</td>
<td>3.4%</td>
<td>1.2%</td>
<td>1.6%</td>
<td>6.6%</td>
<td>6.4%</td>
<td>9.4%</td>
<td>7.2%</td>
</tr>
</tbody>
</table>

**Legend**
- 0%
- 0–5%
- 5–15%
- 15–25%
- 25%+

**Note:**
1. The figure is based on the composition of the S&P 500 as of the last trading day of the previous year.
2. Sectors are based on the Global Industry Classification Standard (GICS).
3. Percentage of Companies Subject to New Filings equals the number of companies subject to new securities class action filings in federal courts in each sector divided by the total number of companies in that sector.
4. In August 2016, GICS added a new industry sector, Real Estate. This analysis begins using the Real Estate industry sector in 2017.

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### Heat Maps of S&P 500 Securities Litigation™
#### Percent of Market Capitalization Subject to Core Federal Filings

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
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<tbody>
<tr>
<td>Consumer Discretionary</td>
<td>5.2%</td>
<td>4.9%</td>
<td>4.6%</td>
<td>1.6%</td>
<td>4.4%</td>
<td>2.5%</td>
<td>0.0%</td>
<td>2.8%</td>
<td>8.2%</td>
<td>4.7%</td>
<td>0.5%</td>
</tr>
<tr>
<td>Consumer Staples</td>
<td>4.1%</td>
<td>0.0%</td>
<td>0.8%</td>
<td>14.0%</td>
<td>0.6%</td>
<td>0.0%</td>
<td>1.9%</td>
<td>1.0%</td>
<td>6.7%</td>
<td>15.2%</td>
<td>9.1%</td>
</tr>
<tr>
<td>Energy/Materials</td>
<td>2.9%</td>
<td>5.2%</td>
<td>0.0%</td>
<td>0.9%</td>
<td>0.0%</td>
<td>0.2%</td>
<td>0.0%</td>
<td>19.8%</td>
<td>2.3%</td>
<td>1.4%</td>
<td>1.2%</td>
</tr>
<tr>
<td>Financials/Real Estate</td>
<td>15.2%</td>
<td>31.1%</td>
<td>6.9%</td>
<td>11.0%</td>
<td>0.0%</td>
<td>0.3%</td>
<td>3.0%</td>
<td>11.9%</td>
<td>1.5%</td>
<td>12.5%</td>
<td>2.2%</td>
</tr>
<tr>
<td>Health Care</td>
<td>12.9%</td>
<td>32.7%</td>
<td>0.7%</td>
<td>0.8%</td>
<td>4.4%</td>
<td>0.0%</td>
<td>3.1%</td>
<td>13.2%</td>
<td>2.7%</td>
<td>26.3%</td>
<td>6.6%</td>
</tr>
<tr>
<td>Industrials</td>
<td>8.4%</td>
<td>0.0%</td>
<td>2.1%</td>
<td>1.2%</td>
<td>0.6%</td>
<td>1.7%</td>
<td>0.0%</td>
<td>8.7%</td>
<td>22.3%</td>
<td>19.4%</td>
<td>21.6%</td>
</tr>
<tr>
<td>Telecommunications/Information</td>
<td>9.5%</td>
<td>5.9%</td>
<td>13.4%</td>
<td>2.2%</td>
<td>16.6%</td>
<td>0.0%</td>
<td>7.0%</td>
<td>12.3%</td>
<td>4.4%</td>
<td>19.4%</td>
<td>18.5%</td>
</tr>
<tr>
<td>Utilities</td>
<td>6.0%</td>
<td>0.0%</td>
<td>0.6%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>3.7%</td>
<td>4.4%</td>
<td>9.6%</td>
<td>6.5%</td>
<td>7.9%</td>
<td></td>
</tr>
<tr>
<td>All S&amp;P 500 Companies</td>
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<td>11.1%</td>
<td>5.0%</td>
<td>4.3%</td>
<td>4.7%</td>
<td>0.6%</td>
<td>2.8%</td>
<td>10.0%</td>
<td>6.1%</td>
<td>14.9%</td>
<td>10.0%</td>
</tr>
</tbody>
</table>

**Note:**

1. The figure is based on the composition of the S&P 500 as of the last trading day of the previous year.
2. Sectors are based on the Global Industry Classification Standard (GICS).
3. Percentage of Market Capitalization Subject to New Filings equals the market capitalization of companies subject to new securities class action filings in federal courts in each sector divided by the total market capitalization of companies in that sector.
4. In August 2016, GICS added a new industry sector, Real Estate. This analysis begins using the Real Estate industry sector in 2017.
Status of Filings by Year – Core Federal Filings 2010 – 2019

Note: Percentages may not add to 100 percent due to rounding.
Status of M&A Filings Compared to Core Federal Filings 2009 – 2018

Note:
2. The 2019 filing cohort is excluded since a large percentage of cases are ongoing.
Annual Median Lag between Class Period End Date and Filing Date—Core Federal Filings
2010 – 2019

Note: This analysis excludes filings with only Section 11 claims and ICO-or cryptocurrency-related filings because there is often no specified end of the class period.
Settlements
Note: Settlement dollars adjusted for inflation; 2019 dollar equivalent figures used. N refers to the number of observations.

Securities Class Action Settlements: 2019 Review and Analysis, Figure 2.
Dollars in Millions

Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. Percentages may not sum to 100 percent due to rounding.
Securities Class Action Settlements: 2019 Review and Analysis, Figure 3.
Mega-Settlements 2010–2019

Total Mega Settlement Dollars as a Percentage of All Settlement Dollars
Number of Mega Settlements as a Percentage of All Settlements


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## Settlements by Court Circuit
### 2015–2019
#### Dollars In Millions

<table>
<thead>
<tr>
<th>Circuit</th>
<th>Number of Settlements</th>
<th>Median Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>22</td>
<td>$8.5</td>
</tr>
<tr>
<td>Second</td>
<td>180</td>
<td>$10.2</td>
</tr>
<tr>
<td>Third</td>
<td>49</td>
<td>$8.6</td>
</tr>
<tr>
<td>Fourth</td>
<td>27</td>
<td>$14.5</td>
</tr>
<tr>
<td>Fifth</td>
<td>34</td>
<td>$9.9</td>
</tr>
<tr>
<td>Sixth</td>
<td>29</td>
<td>$13.2</td>
</tr>
<tr>
<td>Seventh</td>
<td>39</td>
<td>$11.3</td>
</tr>
<tr>
<td>Eighth</td>
<td>13</td>
<td>$13.8</td>
</tr>
<tr>
<td>Ninth</td>
<td>189</td>
<td>$8.0</td>
</tr>
<tr>
<td>Tenth</td>
<td>16</td>
<td>$6.7</td>
</tr>
<tr>
<td>Eleventh</td>
<td>35</td>
<td>$6.3</td>
</tr>
<tr>
<td>DC</td>
<td>3</td>
<td>$29.5</td>
</tr>
</tbody>
</table>

Note: Settlement dollars adjusted for inflation; 2019 dollar equivalent figures used. 2019 results are preliminary and subject to revision.
## Top 25 Post-Reform Act Securities Class Action Settlements

<table>
<thead>
<tr>
<th>Issuer</th>
<th>Settlement Year</th>
<th>Total Settlement Amount (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enron Corp</td>
<td>2006</td>
<td>$7,230.5</td>
</tr>
<tr>
<td>WorldCom, Inc.</td>
<td>2005</td>
<td>$6,194.1</td>
</tr>
<tr>
<td>Tyco International</td>
<td>2007</td>
<td>$3,200.0</td>
</tr>
<tr>
<td>Cendant Corp</td>
<td>2000</td>
<td>$3,133.6</td>
</tr>
<tr>
<td>Petroleo Brasileiro S.A. - Petrobras</td>
<td>2018</td>
<td>$3,000.0</td>
</tr>
<tr>
<td>AOL Time Warner, Inc.</td>
<td>2006</td>
<td>$2,500.0</td>
</tr>
<tr>
<td>Bank of America Corporation</td>
<td>2013</td>
<td>$2,425.0</td>
</tr>
<tr>
<td>Household International, Inc.</td>
<td>2016</td>
<td>$1,575.0</td>
</tr>
<tr>
<td>Nortel Networks Corp I</td>
<td>2006</td>
<td>$1,142.8</td>
</tr>
<tr>
<td>Royal Ahold, N.V.</td>
<td>2006</td>
<td>$1,100.0</td>
</tr>
<tr>
<td>Nortel Networks Corp II</td>
<td>2006</td>
<td>$1,074.3</td>
</tr>
<tr>
<td>Merck &amp; Co., Inc.</td>
<td>2016</td>
<td>$1,062.0</td>
</tr>
<tr>
<td>McKesson HBC Inc.</td>
<td>2006</td>
<td>$1,052.0</td>
</tr>
<tr>
<td>American International Group, Inc.</td>
<td>2012</td>
<td>$1,069.5</td>
</tr>
<tr>
<td>American International Group, Inc.</td>
<td>2015</td>
<td>$970.5</td>
</tr>
<tr>
<td>UnitedHealth Group, Inc.</td>
<td>2009</td>
<td>$925.5</td>
</tr>
<tr>
<td>HealthSouth Corp.</td>
<td>2007</td>
<td>$804.5</td>
</tr>
<tr>
<td>Xerox Corp.</td>
<td>2008</td>
<td>$750.0</td>
</tr>
<tr>
<td>Lehman Brothers Holdings, Inc.</td>
<td>2012</td>
<td>$735.2</td>
</tr>
<tr>
<td>Countrywide Financial Corp.</td>
<td>2010</td>
<td>$624.0</td>
</tr>
<tr>
<td>Cardinal Health, Inc.</td>
<td>2007</td>
<td>$600.0</td>
</tr>
<tr>
<td>Citigroup, Inc.</td>
<td>2013</td>
<td>$590.0</td>
</tr>
<tr>
<td>Lucent Technologies, Inc.</td>
<td>2008</td>
<td>$517.2</td>
</tr>
<tr>
<td>BankAmerica Corp; NationsBank Corp</td>
<td>2002</td>
<td>$490.0</td>
</tr>
<tr>
<td>Pfizer, Inc.</td>
<td>2016</td>
<td>$486.0</td>
</tr>
</tbody>
</table>

Source: Securities Class Action Services (SCAS); CRSP; Bloomberg; Refinitiv Eikon; SEC Filings; Court Filings; Public Press; Securities Class Action Clearinghouse
Scheme Liability Development:

Agenda

- Section 10(b) and Rule 10b-5
- Scheme Liability
- Background Cases: Stoneridge and Janus
- Lorenzo Facts & Holding
- Reconciling Janus
- Early Interpretations of Lorenzo and Potential Impact
Section 10(b) of the Securities Exchange Act of 1934

“It shall be unlawful for any person, directly or indirectly . . . —

To use or employ, in connection with the purchase or sale of any security . . . or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe . . . .”

15 U.S.C.A. § 78j (b)
Rule 10b-5 makes it unlawful

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security

17 C.F.R. § 240.10b–5
Elements of a Section 10(b) Claim

In a Section 10(b) private action, a plaintiff must prove:
- a material misrepresentation or omission by the defendant;
- scienter;
- a connection between the misrepresentation or omission and the purchase or sale of a security;
- reliance upon the misrepresentation or omission;
- economic loss; and
- loss causation.
Claims brought pursuant to sections (a) and (c) are often referred to as “SCHEME LIABILITY” CLAIMS.
Scheme liability does not require that the defendant have made a statement. It requires that the defendant have engaged in “acts” upon which investors may justifiably rely—i.e., conduct, undertaken with scienter, that creates a false appearance of fact.

What does scheme liability entail? Some examples:

- Creating sham corporate entities to misrepresent the flow of income. Simpson v. AOL Time Warner Inc., 452 F.3d 1040 (9th Cir. 2006).


**Facts:**

- Respondents supplied cable boxes to a cable company.
- Cable company allegedly arranged to overpay for each cable box, with the understanding that respondents would use that money to purchase advertising from the cable company.
- The transactions allegedly enabled the cable company to fool its auditor into issuing a clean opinion.

**Held:** The Court “conclude[d] respondents' deceptive acts, which were not disclosed to the investing public, are too remote to satisfy the requirement of reliance.”

- Concerns Rule 10-5(b), regarding an untrue statement of material fact in connection with the purchase or sale of securities.

- **Facts:**
  - Janus Capital Management (JCM) was a mutual fund investment adviser to Janus Investment Fund, a separate legal entity owned by mutual fund investors.
  - JCM allegedly participated in drafting Janus Investment Fund’s prospectuses, which included false information.

- **Held:** Only “makers” of the statement can be held liable.
“The maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it.”

In Janus, JCM (the fund manager) was not the maker of the statement, Janus Investment Fund was--because the Fund had the ultimate authority over prospectus’ contents.
Facts:

- Investment banker (Lorenzo) sent emails to prospective investors that described a potential investment in a company with “confirmed assets” of $10 million.
- In fact, Lorenzo knew that the company had recently disclosed that its total assets were worth less than $400,000.
- The contents of the email was written by Lorenzo’s boss—the statements’ “maker.”
**Held:** Dissemination of someone else’s false statement can qualify as scheme liability under Rule 10b-5 (a) and (c)

- By sending emails that Lorenzo understood to contain material untruths, he “employ[ed]” a “device,” “scheme,” and “artifice to defraud” within the meaning of subsection (a).
- And he “engage[d] in a[n] act, practice, or course of business” that “operate[d] ... as a fraud or deceit” under subsection (c).
- The Court saw “nothing borderline about this case, where the relevant conduct ... consists of disseminating false or misleading information to prospective investors with the intent to defraud.”
Reconciling Janus in Lorenzo

- Not being the “maker” for purposes of Rule 10b-5(b) does not preclude liability under 10b-5(a) and (c) when one disseminates false information.
- Janus “said nothing about the Rule’s application to the dissemination of false or misleading information. And we can assume that Janus would remain relevant (and preclude liability) where an individual neither makes nor disseminates false information—provided, of course, that the individual is not involved in some other form of fraud.” (emphasis added).

[Image of Justice Breyer with opinion]
Malouf v. SEC, F.3d 1248, 1259 (10th Cir. 2019)

- The Tenth Circuit is the only circuit court to address Lorenzo so far and the opinion contains dicta that arguably appears to expand Lorenzo.

- Facts:
  - Malouf, a financial advisor, routed client trades to a brokerage he formerly owned and which owed him money, and then failed to disclose a conflict of interest to his employer’s compliance officer.
  - The employer then disseminated false statements to the SEC and public as a result of its lack of knowledge of the conflict.
Early Interpretations of *Lorenzo*

Malouf v. SEC, F.3d 1248, 1259 (10th Cir. 2019)

- **Held:** “Applying Lorenzo, we conclude that Mr. Malouf’s failure to correct [employer’s] misstatements could trigger liability….”
- A person “could incur liability under these provisions [Rule 10b-5(a) & (c)] when the conduct involves another person’s false or misleading statement.”
- “The Supreme Court rejected the same argument urged by Mr. Malouf (that the SEC’s interpretation would render Rule 10b-5(b) superfluous).”
Early Interpretations of *Lorenzo*

**Broad interpretation**

In re Longfin Corp. Sec. Class Action Litig., 2019 WL 1569792, at *8 (S.D.N.Y. Apr. 11, 2019) (held that allegations an underwriter “facilitated” a securities offering and a company’s listing on NASDAQ—with the knowledge that the shares did not comply with the listing requirements—were sufficient to allege scheme liability under Lorenzo).

**Narrow interpretation**

In EnSource Investments LLC v. Willis, 2019 WL 6700403, at *13 (S.D. Cal. Dec. 6, 2019) (found that Lorenzo had “no bearing on th[e] case” where “Plaintiff does not argue that [the corporate entities] disseminated any false statements.”).
Early Interpretations of *Lorenzo*

Is making a misstatement enough for scheme liability?

- **SEC v. SeeThruEquity, LLC, 2019 WL 1998027 (S.D.N.Y. Apr. 26, 2019)** (denying motion to dismiss because *Lorenzo* foreclosed stock researcher’s argument that the SEC must allege a deceptive act distinct from a misstatement).

- **SEC v. Ustian, 2019 WL 7486835, at *40 (N.D. Ill. Dec. 13, 2019)** (choosing to sidestep argument that making a misstatement is enough because the defendant had “disseminated” the statements at issue bringing him under the purview of *Lorenzo*).
Potential Impact of *Lorenzo*

- Possible it will be limited to its square holding that disseminating false statements is deceptive conduct
- Less predictability about what actions (or inactions) other than statements implicate Rule 10b-5
- More difficulty for secondary actors and non-speakers to be dropped from a case at the pleading stage.
- Normative concern that defendants will receive less rigorous analysis than if the court is required to separately analyze each element of the Rule.
- Greater significance for scienter, reliance elements of a private cause of action
Securities Class Action Filings and Settlements

‘33 Act Claims in State Court: Litigation Trends Post-Cyan
A Brief Overview of Selected, Frequently Litigated Federal Securities Laws:

- **The Securities Act of 1933** (the “*Securities Act*” or “’33 Act”) imposes requirements on companies offering securities to the public.¹
  - Created express private rights of action
  - Authorized concurrent federal and state court jurisdiction over private suits
  - Barred removal of such suits from state to federal court

- **The Securities Exchange Act of 1934** (the “*Exchange Act*” or “’34 Act”) regulates the subsequent trading of securities.²
  - Implied private right of action under Section 10(b); numerous express rights of action
  - Federal courts have exclusive jurisdiction

¹ 15 U.S.C. § 77a et seq.
A Brief Overview of Selected, Frequently Litigated Federal Securities Laws:
Securities Act of 1933

• The ’33 Act:¹
  1. Governs the contents of a registration statement (including a prospectus) in connection with a securities offering
  2. Underwriter and other individuals signing the registration statement can be held liable for material misstatements and omissions therein
  3. Violations can lead to civil liability under Sections 11 (registration statements), 12(a)(1) (unregistered sale), or 12(a)(2) (prospectus or oral communications)

• Three fundamental elements for liability under Section 11:²
  1. Claimant purchased securities pursuant to allegedly deficient registration statement;
  2. Registration statement includes a material misrepresentation or omits a material fact; and
  3. Claim is asserted against defendants who are covered by statute

¹ 15 U.S.C. § 77a et seq.
² 15 U.S.C. § 77k
Congress passed the Private Securities Litigation Reform Act (“PSLRA” or “Reform Act”) in 1995 in order to stem perceived abuses by plaintiffs bringing securities class actions.¹

- Heightened pleading standards, including requirement that plaintiffs plead facts giving rise to a strong inference of scienter
- Stay of discovery during the pendency of any motion to dismiss
- To avoid obstacles, plaintiffs began bringing securities class actions under state law

To prevent end-run around PSLRA, Congress enacted the Securities Litigation Uniform Standard Act of 1998 (“SLUSA”) to amend both Acts.²

- Empowered defendants in certain class actions involving state-law claims brought in state court, to remove such actions to federal court, where many would be dismissed
- SLUSA does not preempt any state law cause of action, but rather denies plaintiffs the right to use the class action device to vindicate certain claims

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The particular types of claims subject to SLUSA are state statutory or common law claims alleging a misrepresentation or omission of a material fact, or manipulation or deception, in connection with the purchase or sale of a covered security.

There is a “Delaware carve-out” exception for claims in the state of incorporation based on breach of fiduciary duty stemming from mergers, acquisitions, and other such transactions.

Courts look to the substance of the allegations, not merely the use or absence of terms like “fraud” or “manipulation”.

Covered security means one authorized for listing on a national securities exchange or issued by an investment company registered under the 1940 Act.

SLUSA also provides that, on a proper showing, a federal district court may stay discovery proceedings in any private action in a state court, in effect to prevent an end-run around a PSLRA discovery stay concerning the same dispute.
A Brief Overview of Selected, Frequently Litigated Federal Securities Laws:
SLUSA Split Resolved by *Cyan*

- SLUSA led to split by federal district and state courts as to whether state courts had jurisdiction over suits brought exclusively under the ’33 Act
  - Most district courts throughout the country held that state courts lacked jurisdiction over ’33 Act claims
  - California state and federal courts—as well as some federal district courts elsewhere—generally allowed ’33 Act class actions to proceed in state court
- No federal appellate decisions, in part because remand orders cannot be appealed
Supreme Court Resolves Split: *Cyan*
The Statutory Language—or “Gibberish”—of the SLUSA

- § 77p(b) prohibits certain securities class actions based on state law:
  - “No covered [i.e., 50+ member] class action based upon the statutory or common law of any State ... may be maintained in any State or Federal court by any private party alleging—
    - (1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security [i.e., listed on national stock exchange]; or
    - (2) that the defendant used or employed any manipulative or deceptive decease or contrivance in connection with the purchase or sale of a covered security.”

- § 77p(c) provides for removal of those class actions to, and likely dismissal in, federal court:
  - “Any covered class action brought in any State court involving a covered security, as set forth in subsection (b) of this subsection, shall be removable to the Federal district court in which the action is pending, and shall be subject to subsection (b) of this section.”

- SLUSA also amended the ’33 Act’s jurisdictional provision, § 77v(a), with “except clauses”:
  - Grant of Concurrent jurisdiction: “The district courts of the United States ... shall have jurisdiction[,] concurrent with State and Territorial courts, except as provided in section 77p of this title with respect to covered class actions, of all suits in equity and actions at law brought to enforce any liability or duty created by [the ’33 Act].”
  - Bar on Removal: “Except as provided in section 77p(c) of this title, no case arising under [the ’33 Act] and brought in any State court of competent jurisdiction shall be removed to any court of the United States.”

2 15 U.S.C. §77p(b) (emphasis added)
3 15 U.S.C. §77p(c)
4 15 U.S.C. §77v(a) (emphases added)
Supreme Court Resolves Split: 
*Cyan, Inc. v. Beaver County Employees Retirement Fund*

- Investors in Cyan brought class action against company in state court, alleging only ‘33 Act violations\(^1\)
- **Cyan** moved to dismiss, arguing that SLUSA’s “except clause” stripped state court jurisdiction over “covered class actions” under ‘33 Act
  - Cyan argued that the “except clause” reference to “covered class actions” points to, and only to, § 77p(f)(2)’s definition of that term, which does not mention anything about whether suit is based on state or federal law\(^2\)
    - Thus, it argued, the “except clause” exempts all sizable class actions from § 77v(a)’s conferral of jurisdiction on state courts
  - Cyan also argued that SLUSA was enacted to “make good on the promise of” the PSLRA heightened pleading requirements by limiting ‘33 Act claims to federal court\(^3\)
- **Investors** argued that SLUSA left intact state court jurisdiction over all suits alleging only ‘33 Act claims
- In amicus brief, U.S. government argued § 77p(c) should allow defendants to remove ‘33 Act actions to federal court

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\(^2\) Id. at 1068.

\(^3\) Id. at 1072.
California state court agreed with investors; California appellate courts declined to review.

The Supreme Court, when examining the “except clause” at oral argument, noted the difficulty in interpreting the interplay between § 77v(a) and 77p.

During oral argument, Justice Alito noted:

“"Our late colleague [Justice Scalia] wrote a book called Reading Law, which provides guidance about how you read statutes. And I looked through that to see what we are supposed to do when Congress writes gibberish. And that's what we have here. You said it's obtuse. That's flattering. And we have very smart lawyers here who have come up with creative interpretations, but this is gibberish. It's ... just gibberish.”\(^2\)

In response to the Investor’s arguments, Justice Gorsuch responded:

“"[A]ren't we stuck with gibberish your way too? I mean, it seems like it's gibberish all the way down here ....”\(^2\)

But the Court, he said, must try to give effect to Congress’s language, for “the respect for the legislative process dictates that we afford some meaning to these words.”\(^3\)

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\(^1\) Tr. of Oral Argument at 11, Cyan, 138 S. Ct. 1061 (2018)
\(^2\) Id. at 47.
\(^3\) Id. at 48.
In March 2018, the Supreme Court held unanimously:

1. SLUSA does not strip state courts of their long-standing jurisdiction to adjudicate class actions alleging only violations of the ’33 Act.
   - “By its terms, § 77v(a)’s ‘except clause’ does nothing to deprive state courts of their jurisdiction to decide class actions brought under the 1933 Act. ... The statute says what it says—or perhaps better put here, does not say what it does not say.”¹
   - “The critical question for this case is therefore whether §77p limits state-court jurisdiction over class actions brought under the 1933 Act. It does not. ... § 77p bars certain securities class actions based on state law. And as a corollary of that prohibition, it authorizes removal of those suits so that a federal court can dismiss them. But the section says nothing, and so does nothing, to deprive state courts of jurisdiction over class actions based on federal law. That means the background rule of §77v(a)—under which a state court may hear the Investors’ 1933 Act suit—continues to govern.”²
   - As to Cyan’s argument that § 77v(a) modified all “covered class actions,” the Court stated that it would be “cherry pick[ing] from the material covered by the statutory cross-reference. But if Congress had intended to refer to the definition [of ‘covered class action’] alone, it presumably would have done so—just by adding a letter, a number, and a few parentheticals.”³
   - In light of the statutory text, the Court rejected Cyan’s arguments as to SLUSA’s purpose: “In the end, the uncertainty surrounding Congress’s reasons for drafting that clause does not matter.”⁴

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¹ Cyan, at 1069.
² Id. at 1069 (internal citations omitted).
³ Id. at 1070.
⁴ Id. at 1075.
The Court also held unanimously:

2. SLUSA does not permit defendants to remove class actions alleging only ’33 Act claims from state to federal court.

   • “[T]he covered class actions described in § 77p(b) can be removed to federal court (and, once there, shall be subject to dismissal because precluded). And which are the covered class actions described in § 77p(b)? By this point, no one should have to be reminded: They are state-law class actions alleging securities misconduct. So those state-law suits are removable. But conversely, federal-law suits like this one—alleging only 1933 Act claims—are not ‘class action[s] ... as set forth in subsection (b).’ So they remain subject to the 1933 Act's removal ban.”¹

In sum:

• “SLUSA did nothing to strip state courts of their longstanding jurisdiction to adjudicate class actions alleging only 1933 Act violations. Neither did SLUSA authorize removing such suits from state to federal court. We accordingly affirm the judgment below.”²

¹ Cyan, 138 S. Ct at 1075 (internal citations and quotations omitted).
² Id.
Trends in State Court ’33 Act Litigation Post—Cyan:
Implications of Concurrent State Court Jurisdiction

- Given the dramatic increase in ’33 Act claims brought in state court following Cyan, at least three important questions have emerged:
  1. Does the PSLRA’s automatic stay of discovery pending a motion to dismiss apply to ’33 Act claims in state courts?
  2. Would ’33 Act cases brought in state court be stayed pending resolution of a parallel federal action?
  3. Will state courts require ’33 Act claims to be subject to heightened pleading standards?

- Cyan recognized that PSLRA’s “substantive” provisions are applicable to ’33 Act claims in state court, but provided little guidance:
  “For wherever [’33 Act] suits go, the Reform Act’s substantive protections necessarily will apply.”

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2 Cyan, 138 S. Ct at 1065-66
**Trends in State Court ’33 Act Litigation Post-*Cyan*:**

1. **Does the PSLRA Discovery Stay Apply?**

- Cyan did not expressly address applicability of PSLRA’s discovery stay provision in state courts
- Has led to inconsistent rulings across the country:
  - At least one Connecticut court held that discovery stay applied
    - City of Livonia (May 15, 2019) (concluding that the PSLRA “is not ambiguous and that its plain meaning compels ... providing for a stay of discovery during the pendency of a motion to dismiss [and] applies to state as well as federal actions”)
  - At least one California court has refused to stay discovery
    - Switzer v. Hambrecht & Co. (Sept. 19, 2018) (finding “that the PSLRA's provision for a discovery stay is of a procedural nature, and therefore only applies to actions filed in federal court, not state court”)
  - New York state courts are split, including within New York Supreme Court’s Commercial Division, a common forum for filing ’33 Act actions in state court

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Two NY state trial courts held that PSLRA stay applies in state court:

- **GreenSky (Nov. 25, 2019)**: Justice Schecter granted discovery stay
  
  Emphasized purpose of PSLRA: “The important purpose underlying enactment of the automatic stay—ensuring that cases have merit at the outset—should not be disregarded merely because a federal cause of action is being prosecuted in state court.”¹

- **In re Everquote (Aug. 7, 2019)**: Justice Borrok granted discovery stay²
  
  Emphasized PSLRA’s statutory language (see next slide)

Two earlier 2019 decisions by Justice Scarpulla in Commercial Division held that the automatic stay did not apply in state courts:

- **In re PPDAI Group (July 1, 2019)**³ and **In re Dentsply (Aug. 2, 2019)**⁴
  
  Justice Scarpulla opined that application of the stay “would undermine Cyan’s holding that ’33 Act cases may be heard in state courts”

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² In Re Everquote, Inc. Sec. Litig., 106 N.Y.S.3d 828 (Sup. Ct. N.Y. Cty. 2019)
³ In re PPDAI Grp. Sec. Litig., 64 Misc. 3d 1208(A) (Sup. Ct. N.Y. Cty. July 1, 2019)
Courts holding that discovery stay applies in state court have rested on statutory language of PSLRA’s discovery stay

- **15 U.S.C. § 77z-1(a)(1)**, the subsection of the PSLRA preceding the discovery stay subsection, states that "[t]he provisions of this subsection shall apply to each private action arising under [the ’33 Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure"\(^1\)
  - This subsection concerns procedural requirements for private securities class actions, such as a sworn certification with a complaint, procedures for the appointment of lead plaintiff, etc.
  - It follows that these requirements are only applicable in federal court
- **15 U.S.C. § 77z-1(b)(1)**, the discovery stay subsection, provides that, “[i]n any private action arising under [the ’33 Act], all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss....”\(^2\)
  - Governs only the PSLRA’s stay of discovery and required preservation of evidence
  - Absence of “Federal Rules” language suggests that it is not limited to federal court

**GreenSky (Nov. 25, 2019):**

- “Nowhere in 15 U.S.C. § 77z-1(b)(1) does the statute indicate that it applies only to actions brought in federal court. ... The statute simply does not say that the automatic stay is limited to claims brought pursuant to the 1933 Act in federal court.”\(^3\)

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\(^1\) 15 U.S.C. § 77z-1(a)(1) (emphasis added)
\(^2\) 15 U.S.C. § 77z-1(b)(1) (emphasis added)
\(^3\) In re Everquote, 106 N.Y.S. 3d at 834-35; see also City of Livonia, 2019 WL 2293924, at *2-5
Trends in State Court ’33 Act Litigation Post-\textit{Cyan}:
2. Will State Courts Stay Case Pending Federal Action?

- With influx of ’33 Act claims bring brought in state courts, defendants are sometimes forced to defend similar claims on two fronts
- New York courts have stayed ’33 Act cases in favor of related, earlier-filed federal proceedings where both actions arose out of same subject matter or allegations (i.e., the first-filed rule)
  \begin{itemize}
  \item \textbf{In re Qudian} (Nov. 14, 2018) – Justice Sherwood granted motion to stay where five identical actions had been filed in federal court, including one filed prior to state court action
  \item \textbf{Gordon v. Gridsum} (Apr. 10, 2019) – Justice Schecter granted motion to stay action pending resolution of first-filed federal action
  \item \textbf{Mahar v. General Electric Co.} (Oct. 15, 2019) – Justice Borrok stayed state court action with ’33 Act claims in favor of earlier-filed federal action involving same subject, even where federal claims were under ’34 Act
  \end{itemize}

Applying the first-filed rule, New York state court recently denied stay where state court action was filed prior to federal action

GreenSky (Nov. 25, 2019): Justice Schecter explained that ceding responsibility to federal courts without good cause would erode congressional intent to allow state court jurisdiction

At least one California state court has granted stay of first-filed state court action

In re Sogou (Oct. 7, 2019): California state court granted motion to stay on forum non conveniens grounds based on subsequently filed federal action in New York

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New York state courts employ a heightened pleading standard for misrepresentation and fraud claims under CPLR 3016(b):

“Where a cause of action or defense is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail.”

So far, state courts have not applied heightened standards to ’33 Act claims

In re Netshoes (July 16, 2019)¹ and In re Dentsply Sirona (Sept. 26, 2019)²

Justices analogized CPLR 3016(b) with FRCP 9(b), which only applies where ’33 Act claims explicitly allege fraud

CPLR 3016(b) is arguably broader than Rule 9(b)

’33 Act claim alleging misrepresentation (even without fraud) arguably subject to CPLR 3016(b) under language of the rule

More than 100 public companies have responded to Cyan by adding federal forum selection provisions for ’33 Act claims in their corporate bylaws or articles of incorporation.

Delaware Court of Chancery addressed issue in Sciabacucchi v. Salzberg, (Dec. 19, 2018):¹

- Held that federal exclusive forum provisions for ’33 Act claims of three companies’ articles of incorporation were ineffective and invalid.
- Currently on appeal before Delaware Supreme Court; arguments were heard on January 8, 2020.
- If upheld, provisions would become invalid for Delaware corporations, and other states may follow.

Following Cyan, state courts throughout the country have reached conflicting decisions on important issues, setting up need for appellate courts to provide answers

In 2020, appellate courts may have occasion to decide:

- Whether the PSLRA’s automatic stay of discovery pending motions to dismiss applies to state court claims under the ’33 Act

- Whether state actions under the ’33 Act should be stayed pending the resolution of federal cases

- Whether state courts—particularly, in New York—should apply heightened pleading standards for misrepresentation and fraud claims arising under ’33 Act
MCLE Information

- **The Handout.** Participants must download the PowerPoint as the handout for this webinar to comply with MCLE requirements. Click on “File” in order to “Save As” to your computer.

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- **Questions.** Direct MCLE questions and forms to Victoria Chan (her contact information is found on all MCLE forms provided):
  
  Victoria Chan at 605-849-5378 or vchan@gibsondunn.com
Professional Profiles
Jennifer L. Conn is a litigation partner in the New York office of Gibson, Dunn & Crutcher. She is a member of Gibson Dunn’s General Commercial Litigation, Securities Litigation, Appellate, and Privacy, Cybersecurity and Consumer Protection Practice Groups.

Ms. Conn is a commercial litigator, who has extensive experience in a wide range of complex commercial litigation matters, including those involving securities, financial services, accounting malpractice, antitrust, contracts, insurance and information technology. Prior to joining Gibson Dunn, Ms. Conn was an associate with Cravath, Swaine & Moore in New York. She also was a law clerk for the Honorable Lawrence M. McKenna, United States District Judge for the Southern District of New York.

Ms. Conn received her Juris Doctor from Columbia University School of Law in 1995, where she was a Harlan Fiske Stone Scholar. She graduated, cum laude with distinction in all subjects, from Cornell University, College of Arts and Sciences, in 1992, with a Bachelor of Arts in Government.

Ms. Conn regularly writes and speaks on various subjects, particularly those relating to securities litigation. She is the co-editor and a co-author of the Firm’s Practicing Law Institute Treatise, Securities Litigation: A Practitioner’s Guide.

In addition, Ms. Conn is an Adjunct Professor of Law at Columbia University School of Law, lecturing on securities litigation.

Ms. Conn is admitted to practice in the State of New York, the District of Columbia (inactive status), the United States District Courts for the Southern and Eastern Districts of New York and the Eastern District of Wisconsin, the United States Courts of Appeal for the Second and Eighth Circuits, and the United States Supreme Court.
Alex Mircheff is a partner in Gibson Dunn’s Los Angeles office. His practice emphasizes securities and appellate litigation, and he has substantial experience representing issuers, officers, directors, and underwriters in class action and shareholder derivative matters.

Mr. Mircheff has handled matters across a variety of industries, including biotech, financial services, accounting, real estate, entertainment, engineering, manufacturing, and consumer products.

Multiple of Mr. Mircheff’s wins in stockholder class actions have been recognized as ‘Defense Verdict of the Year’ by publications including The Recorder and Los Angeles Daily Journal. Those matters include dismissals of claims for hundreds of millions of dollars against Herbalife; and against Arrowhead Research Co., where Mr. Mircheff was lead counsel at the trial court and on appeal.

Mr. Mircheff’s clients have also included Dole; Zillow; Panda Restaurant Group; Toyota; Deloitte; PwC; UBS; Deutsche Bank; Goldman Sachs; Edward Jones; Trust Company of the West; major retail, construction, and media companies; law firms; and others.

Mr. Mircheff has been named a ‘Rising Star’ each year since 2012 by the Southern California ‘Superlawyers’ edition of Los Angeles Magazine. In 2019, Mr. Mircheff was recognized as a “Next Generation Lawyer” by Legal 500 in the area of M&A: Litigation Defense. Before joining the firm, Mr. Mircheff served as a law clerk to the Honorable Cynthia Holcomb Hall of the United States Court of Appeals for the Ninth Circuit and to the Honorable Gary A. Feess of the United States District Court for the Central District of California.

Mr. Mircheff earned his law degree summa cum laude from Loyola Law School in Los Angeles, where he was the winner of the William T. Aggeler Award for ranking first in his graduating class, elected Order of the Coif, and served as an editor on the Loyola Law Review.

Mr. Mircheff is admitted to practice before the Supreme Court of the United States, the U.S. Courts of Appeals for the Seventh, Eighth, and Ninth Circuits, the U.S. District Courts for Central and Eastern Districts of California, and all California state courts.

Mr. Mircheff also serves as Chair of the Board of Directors for California YMCA Youth and Government, a statewide organization with a mission of promoting civic engagement and character development in high school and middle school students.
Robert F. Serio is a partner in the New York office of Gibson, Dunn & Crutcher and a Co-Chair of Gibson Dunn’s national Securities Litigation Practice Group. His practice involves complex commercial and business litigation, with an emphasis on securities class actions, shareholder derivative litigation, SEC enforcement matters and corporate investigations. Mr. Serio is consistently ranked as one of the top securities litigators in New York and has been recognized by The Best Lawyers in America© and New York Super Lawyers. Mr. Serio is a co-editor of the Practising Law Institute’s leading treatise on securities litigation entitled Securities Litigation: A Practitioner’s Guide. From 2004 to 2015, he served as Co-Partner in Charge of the Firm’s New York office.

Representative Matters

• Currently serving as lead trial counsel for Nasdaq in the High-Frequency Trading Litigation.
• Successfully represented numerous underwriters in securities class action lawsuits involving more than $70 billion in mortgage pass-through certificates, including:
  ○ Credit Suisse, Deutsche Bank, Morgan Stanley, Goldman Sachs: Won affirmance in the United States Court of Appeals for the Second Circuit of a ruling declining to extend the American Pipe tolling doctrine to the statute of repose of the Securities Act of 1933.
  ○ RBS Securities Inc.: Won dismissal with prejudice of a lawsuit brought by one of the world’s three largest pension funds alleging fraud in the sales of more than a billion dollars of residential mortgage-backed certificates.
• Och-Ziff Capital: Successfully represented the company and its directors and officers in securities and derivative litigation.
• Flagstar Bancorp: Successfully represented the current and former directors and officers in shareholder derivative litigation.
• Al-Sanea: Won dismissal in the New York Court of Appeals on grounds of forum non conveniens of a multi-billion dollar fraud claim involving a Saudi partnership.
• First American: Defended The First American Corporation and its subsidiary eAppraisIT LLC in a putative securities class action lawsuit. Defeated class certification and obtained dismissal with prejudice.
• Bear Stearns: Represented Bear Stearns in resolving 100 securities class actions and shareholder derivative litigations involving IPO allocation and research analyst issues. Won dismissal of shareholder derivative action against Bear Stearns and its directors over alleged research analyst conflicts. Represented Bear Stearns officers and directors in shareholder derivative actions over subprime issues.
• Merrill Lynch: Won dismissal of all claims against Merrill Lynch in In re Merrill Lynch Limited Partnership Litigation and In re Duke Energy Securities Litigation.

Mr. Serio received a law degree from the University of California at Los Angeles in 1985 and a Bachelor of Arts degree, cum laude, from Harvard University in 1980. Mr. Serio is a member of the New York and California Bars.
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