the POMERANTZ MONITOR

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Do Those Billions of Dollars Left on the Table Belong to You?

INSIDE THIS ISSUE

In 2020, as courts and law firms adapted to operating during the pandemic, the number of securities class actions filed in federal and state courts was 22% lower than in 2019, according to Cornerstone Research. Its report, Securities Class Action Filings: 2020 Year in Review, reveals that "the 2020 total [334 new cases], however, is still 49% higher than the 1997-2019 average."

In the last decade, there has been a significant spike in securities class actions brought outside the United States, in response to the U.S. Supreme Court's 2010 decision in *Morrison v. National Australia Bank*, which barred recovery for losses in foreign-traded securities under the U.S. federal securities laws. This trend continues to expand. Canada, Australia, and the Netherlands are becoming experienced in the class action process. Other jurisdictions, such as Poland, the U.K., Japan, Israel, and Saudia Arabia are moving towards that end by enacting class action or collective action laws to protect shareholders. Germany and Brazil, as well as other jurisdictions, have become host to opt-in litigations.

According to ISS Securities Class Action Services LLC, there were 133 approved monetary securities-related settlements worldwide in 2020, with a total of $5.84 billion recovered for defrauded investors. Investors, however, do not receive any money from a settlement unless they file a claim as part of the settlement administration process. In 2005, Professors James Cox and Randall Thomas, in a seminal article in the *Stanford Law Review*, reported that, as evidenced by their empirical research, more than two-thirds of large institutional investors failed to file claims in securities class action settlements. Although the number of institutional investors that do file claims is likely larger today, billions of dollars continue to be left on the table.

Due to the opt-out nature of American securities class actions—in which individuals and entities that fall within the class definition are automatically class members unless they take affirmative steps to opt out—damaged investors frequently have their rights vindicated in court without even knowing they are members of the class or, indeed, anything else about the litigation. That is why it is essential that institutions have access to a robust research and monitoring system to ensure they do not miss out on opportunities to recover assets.

Once an investor is aware that a potentially recoverable claim exists, navigating the claims filing process requires knowledge, experience and patience. To successfully recover assets in securities related actions requires expertise beyond simply gathering all one's holdings and transactions into a spreadsheet and filling out a form.

Jennifer Pafiti, Partner and Head of Client Services

Even with a favorable settlement in hand, investors should assess the fairness of its terms, particularly where their losses are significant. In some instances, the plan of allocation may not adequately compensate certain class members whose claims may be stronger than those of other class members. A classic example would involve claims arising under both Section 10(b) of the Securities Exchange Act of 1934 and Section 11 of the Securities Act of 1933. Section 10(b) prohibits any act or omission resulting in fraud or deceit in connection with the purchase or sale of any security. Section 11 imposes strict liability against newly public companies for misstatements, even unintentional, in their registration statements and permits recovery for any decline below the stock's initial offering price. Since Section 11 claims, unlike Section 10(b) claims, do not require proof of scienter—that is, the intent or knowledge of wrongdoing—they are stronger and should be treated more favorably under a plan of allocation. However, this is not always the case, and, in such situations, a fund may be well-advised to file an objection to the plan of allocation.

Pomerantz's keen oversight of settlements' fairness to our clients has, over the years, led to concrete results. For example, in the *St. Paul Travelers Companies* securities fraud litigation, Pomerantz challenged the formulae used to calculate recognized losses in the settlement terms. Consequently, lead counsel revised the plan of allocation, resulting in a 60% increase in recognized losses

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for our client.

Jack Lo, Director of Financial Analysis

Sydney N. Castro, Damages Analyst

If a fund's damages are significant, it might choose to opt out of the class to pursue its own, individual claims. To reach this decision, it must weigh the likelihood of increased recovery against giving up a guaranteed payout from successful litigation, the risk of no recovery if the case fails, and the costs of litigation.

To properly monitor portfolios and to receive maximum recovery, at least a basic understanding of the substantive laws involved in the class action is necessary. This has become increasingly complex, as nontraditional case allegations emerge: for example, antitrust class actions in which the underlying anticompetitive conduct impacted the price of publicly traded securities and complex financial products; litigation related to the trading of credit-default swaps and foreign exchange products; and claims concerning cybersecurity, cryptocurrency, special purpose acquisition companies (SPACs), and #MeToo allegations.

For many institutional investors, the task of professional, active portfolio monitoring is too complex, too time-consuming, and too expensive to do in-house. In response to their needs, Pomerantz offers our clients PomTrack®, a proprietary, complimentary global portfolio monitoring service that notifies fiduciaries when assets they oversee suffer a loss that may be attributable to financial misconduct.

Spearheaded by Partner and Head of Client Services Jennifer Pafiti, PomTrack® provides one of the largest global portfolio monitoring services in the United States—currently monitoring for over 100 of the most influential institutional investors worldwide with combined assets in excess of $6.8 trillion. The PomTrack® team comprises attorneys and forensic economists, damage analysts, claims filing specialists, and paralegals, as well as a dedicated team of senior and junior support staff.

For nearly two decades, Pomerantz has been providing this portfolio monitoring service at no cost to our clients. The service includes the preparation of customized, monthly PomTrack® Reports that advise clients of every settlement in which they might be eligible to participate, and the deadlines for objecting and filing proofs of claims.

For a modest fee—a percent of the assets a client recovers in a settlement—the PomTrack® team also offers expert claims filing services for all stages of the process: filing the claim, working with the Claims Administrator to cure any deficiencies, and ensuring that the client receives the recovery to which it is entitled. If the client does not recover from the settlement, no fee is charged.

To learn how PomTrack may assist your fund in portfolio monitoring and claims filing, please contact Jennifer Pafiti: jpafiti@pomlaw.com

The Risks of Investing in SPACs

By Brandon M. Cordovi

Special Purpose Acquisition Companies ("SPACs") burst onto the Wall Street scene, seemingly from nowhere, as the COVID-19 pandemic swept the world by storm in 2020. Their rise to prominence has been so profound that it has garnered the attention of the SEC and the plaintiffs' bar. The glamour of SPACs has even drawn superstar athletes, such as Serena Williams and Alex Rodriguez, as well as entertainers, such as Jay-Z and Ciera, to take on prominent roles as investors and advisors.

What is this seemingly newfound investment opportunity that everyday investors and celebrities alike have flocked to? A SPAC is a publicly traded company that is set up by investors with the sole purpose of raising money through an IPO to acquire an existing company. The SPAC itself does nothing at all. Typically, its only asset is the money raised through the IPO to fund a targeted acquisition.

These shell companies are usually formed by a team of institutional investors. At the time the shell company goes public, it is not certain what existing company it is seeking to acquire. After the money is raised through an IPO, it is placed in an interest-bearing account until the acquisition can be made. The SPAC generally has up to two years to identify a target company to acquire. Once a target company has been identified and an agreement is in place, the acquisition must be approved by the SPAC's shareholders through a vote.

Once the acquisition is completed, shareholders are left with the choice of either converting their shares of the SPAC into shares of the acquired company or redeeming their shares and receiving their investment back plus the accrued interest. If the SPAC fails to identify a target company within the two-year time limit, the SPAC is liquidated, with all shareholders receiving their original investment back along with accrued interest.

Since SPACs have risen to prominence only recently, many investors assume they are new. In fact, SPACs have been around for decades but have scarcely been used. They became more prevalent recently due to the extreme market volatility caused by the COVID-19 pandemic. Existing companies looking to go public were left with a choice: either postpone their IPOs due to the uncertainty, or merge with a SPAC.

The benefits of merging with a SPAC are fairly straightforward. As Peter McNally, global sector lead at Third Bridge, a research firm, explains, "SPACs are giving management and boards of companies more options for quicker and more efficient ways to go public." Registering an IPO with the SEC can take up to six months, while merging with a SPAC takes only a couple of months to complete, providing the acquired company with quicker and easier access to capital. Additionally, in theory, companies acquired by SPACs are not subject to the same scrutiny under the securities laws and by the SEC, as they were not introduced

to the market through IPOs. As a result, SPACs have been more aggressive in making forward-looking statements, prior to targeted acquisitions being finalized, to draw investors in. These perceived benefits are also where the risks lie and are the reason why SPACs have become the focus of the SEC's crackdown.

The risk of investing in a SPAC for everyday investors is significant. For starters, investors do not know which company the SPAC will seek to merge with. That uncertainty, in and of itself, creates risk. Further, SPACs do not seem to be exercising the same rigorous due diligence that is performed during a traditional IPO. The primary concern of a SPAC is to find a target company to acquire before the two-year time limit runs out. For that reason, SPACs are incentivized to find an acquisition that can close quickly rather than finding the best acquisition target based on performance and price.

Typically, being unable to access the hottest IPOs, an average retail investor's ability to access a SPAC as soon as it goes public may tempt them to accept the risks.

Investors are not the only ones who bear some risk with their involvement in SPACs. Target companies run the risk of having the merger rejected by the SPAC's shareholders. Once a company has been chosen for acquisition, the de-SPAC process, which is similar to that of a public company merger, begins. The SPAC, acting as the buyer, requires the approval of its shareholders. Generally, more than 20% of the voting stock approval is mandatory.

Given the recent surge in SPACs, it comes as no surprise that the SEC and the plaintiffs' bar have taken notice. In a statement issued on April 8, 2021, John Coates, the SEC's acting director of the Division of Corporation Finance, cautioned that de-SPAC acquisitions are similar to IPOs and should be treated as such under the securities law. Further, Coates warned, the perception that SPACs are subject to reduced liability is "overstated at best" and "seriously misleading at worst."

Coates warned of the various dangers of forward-looking statements being issued by SPACs, such as their speculative, misleading, and sometimes fraudulent nature. Risk disclosures in SEC filings may serve as a "safe harbor defense" for public companies in securities litigation that arises from their statements to investors, in that predictions, projections and expectations in disclosure documents may not be construed as misleading if they contain sufficient cautionary language disclosing risks. Coates specifically questioned whether SPACs are excluded from the safe harbor under the PSLRA, given their similarity to IPOs, which are excluded. However, there is no definition as to what an IPO consists of in the PSLRA or any SEC rule, and case law interpreting what constitutes an IPO under the PSLRA is sparse. Coates stated that the SEC is considering making rules or providing guidance as to how the PSLRA safe harbors apply at the final stages of a SPAC transaction.

Given the uncertainty regarding whether the safe harbor applies to SPACs, they are expected to be more cautious about the forward-looking statements in their disclosures.

Attorney Brandon M. Cordovi

This will diminish the appeal of SPACs to investors who have relied on these forward-looking statements to anticipate the type of acquisition targeted by a SPAC in which they invested. It is important to note that regardless of whether the safe harbor applies to SPACs, they are still prohibited from making false or misleading statements in their disclosures. With the SEC turning their attention to SPACs, the forward-looking representations issued are now under the microscope for such infractions.

Further, between September 2020 and March 2021, at least 35 SPACs were sued by shareholders in New York state courts. Generally, these lawsuits allege that SPAC directors breached their duties by providing inadequate disclosures regarding the proposed acquisition. Some of the lawsuits also claim that the SPAC itself, along with the target company and its board of directors, aided and abetted the SPAC directors' breaches. Notably, all of these lawsuits are limited to state law tort claims and do not assert any state or federal securities claims. The lawsuits were all filed after the de-SPAC transactions were announced but before shareholders had voted on approving the transactions. As such, the lawsuits seek preliminary injunctive relief to prevent the acquisitions from being finalized.

Lawsuits against SPACs remain in their infancy. The only cases in New York state court that have been resolved are those where plaintiffs stipulated to voluntarily dismiss the action. The lawsuits, however, provide a clear indication that the plaintiffs' bar is monitoring and pursuing SPACs. The Harvard Law School Forum of Corporate Governance anticipates there will be increased litigation in federal courts regarding SPACs, including claims under section 10(b) of the Securities Exchange Act. Given that SEC guidance and intervention appears to be on the horizon, it appears likely that more litigation will follow.

Will SPACs remain prevalent over the long haul, or fade into the background where they have resided for decades? The SECs intervention, or lack thereof, will play a large part in determining that. However, Paul Marshall, co-founder of the investment firm Marshall Wace, did not mince words in his criticism of the future outlook of SPACs, predicting that the phenomenon will "end badly and leave many casualties." Unsurprisingly, based on his outlook on SPACs, Marshall is shorting them and betting on their eventual demise. Time will tell whether he is correct. However, the returns on SPACs have steadily declined, and it appears the phenomenon which blossomed as uncertainty flooded the market may already be fading as that same uncertainty begins to dissipate, the world begins to reopen, and a new normal is established.

The Value of Saber-Rattling Proposals to Break the Shield of Business Judgment

By Michael J. Krzywicki

Attorney Michael J. Krzywicki

A once-in-a-century pandemic is not the only parallel between our current times and the Progressive Era of the late nineteenth and early twentieth centuries, a period of widespread social activism and political reform across the United States. A current progressive issue is shareholder action in response to racial equity and how it impacts shareholder value. Two related stories are now unfolding, as the U.S. Securities and Exchange Commission ("SEC") blocks Amazon's effort to stop shareholder votes for racial equity audits, and a Delaware lawsuit says Pinterest's race and gender bias hurts business. These stories echo the political overtones of the labor disputes of the Progressive Era. In addition, they raise the question: does the business judgment rule survive in today's political climate that values diversity more than ever?

The mere fact that shareholders are owners does not mean much under Delaware law: the business and affairs of every corporation are managed by or under the direction of the board of directors, not the shareholders. Shareholders have literally no say under state law, except in certain fundamental matters where the General Corporation Law gives them a vote, such as in the election of directors, amendment of charter and bylaws, and certain fundamental transactions. Under black letter law, directors not only can ignore the wishes of the shareholders, but also, they must actually exercise their own business judgment. The shareholders, for their part, can remove directors; but they cannot sue the directors for failing to do their bidding.

On the other hand, federal securities law acts as if shareholders have a right to express their preferences to directors. That is not exactly true under state law, but it is the law that governs shareholder access to the corporate proxy. The concerns investors raise over day-to-day business judgments versus corporate governance is more about federal securities law than it is about state corporate law. But federal securities law generally only allows for precatory shareholder proposals, not mandatory ones.

So much of why the issue of the connection between racial equity and shareholder value is intriguing involves the clash of several different legal principles and policy objectives, which seems to require expanding the narrow and unequivocal duty of care owed by directors.

The Use of Disclosed Interests in Business Judgment

There are at least two different contexts that might expand the narrow and unequivocal meanings of business judgment decisions by a board of directors.

The business judgment rule states that boards are presumed to act in "good faith"—absent evidence to the contrary—regarding the fiduciary duties of loyalty, prudence, and care owed to their shareholders. The general problem with interpreting the business judgment rule in the linguistic context of corporate governance has been well canvassed since the scandals at Enron, Global Crossing, ImClone, Tyco, and WorldCom. That is, the duty of care directed to maximize shareholder value must minimally ensure that the corporation remains a going concern. The cure for this problem is also well known: The board attends to the interest of other stakeholders such as employees, customers, and the economic community writ large.

Unfortunately, although this advice is reasonably sound, it is not very helpful. The advice—exercising judgment as a purposeful guide to careful decision making—is a broad generalization that itself must be decided. A rule for exercising judgment that itself demands judgment calls is not much help. This particular rule tells directors to attend to the "interest," but the word "interest" is a word like any other word; it too is equivocal. In other words, the technique for exercising purpose appears to be a variant of the first possibility that directors use linguistic context. If this conclusion is correct, then the second possibility collapses into the first except for the distinction that one is expanding the linguistic context beyond the bounds of a single interest. Consequently, unless there is some way to broaden the scope of possible interests, the rule forecloses as many shareholder proposals as it considers. The SEC recently expanded on this point about the evidence that is used to discern business purpose.

Last August, for the first time in thirty years since Chancellor William Allen, of the Delaware Court of Chancery, famously remarked that "a corporation is not a New England town meeting," the SEC revised the periodic disclosure requirements under Regulation S-K. In many instances, the new regulation replaces the formal prescriptive requirements with flexible guidelines intended to elicit company-specific and industry-wide information deemed material to investors' understanding of the business purpose behind publicly traded companies. By the same token, the new regulation would appear to give directors new latitude under the purpose-based disclosure requirements to create and provide the information they see as material in this wider context. These broad mandates seem to fit the contours of the current transatlantic movement in unexpected ways. The events of 2020 turned the spotlight on corporate America's role in creating and perpetuating societal inequities, a development reminiscent of the century-old disputes arising from a formalistic reliance on vested rights of property and freedom of contract by corporations to justify injunctions against labor reform activity and invalidation of labor-protective legislation. During the Progressive Era, Justice Oliver Wendell Holmes led the charge from the Supreme Court bench in dissent from the formalistic view and put enormous pressure on corporations to publicly adopt stakeholder-centric proposals.

The cases Holmes heard submerged a conflict not unlike the present issue between two legally acknowledged "rights"—the right to contract freely that courts recognized, and the right to compete freely that courts suppressed. Because the controversies involved two conflicting categories of "vested" rights, Holmes insisted that deductive reasoning could not neutrally decide the cases. Rather, resolution of the issue required a process of policy balancing. Holmes perhaps put the point best in dissent from the Court in *Lochner,* where he stated: "General propositions do not decide concrete cases."

The highly concentrated institutional investiture in today's stock market, coupled with widespread endorsement from asset managers and comptrollers backing the stakeholder model, may further drive boards to adopt an expanded view of corporate purpose in their decision making.

As Holmes wrote, "if we take the view of our friend the bad man, we shall find that he does not care two straws for the axioms or deductions, but he does want to know what the Massachusetts or English courts are likely to do in fact." The new SEC disclosures allow shareholders to know in fact under federal securities law what may likewise be more amendable to the needs of modern society, if directors are more open about the non-shareholder value judgments that influenced board decisions, instead of instinctively trying to veil them behind a curtain of syllogistic formal business judgments. Otherwise, companies are likely to face future shareholder actions for their continued failure to disclose such material information.

Q&A

Linda Kellner

Pomerantz recently spoke with Linda Kellner, the President of Savasta & Co., Inc., a third-party administrator for Taft-Hartley pension plans.

***Monitor*: What path brought you to a career in pension management?**

Linda Kellner: I was hired by the Teamsters Local 295 as a secretary. I eventually became the bookkeeper's assistant, and then a claims examiner working in the pension department, where I learned everything that went on in the fund office. While working for the Teamsters, I got a Bachelor of Business Administration. By 1994, when the Teamsters' fund's third-party administrator left, I had long experience working for their pension and welfare funds. They offered me the job, but I had two little kids at home and didn't want the added responsibility. The fund hired Neil Savasta as their third-party administrator, and I became an employee of Savasta & Co.

M: What changed for you then?

LK: Neil and I started reaching out to other funds that needed a third-party administrator, and the company grew. I took the requisite courses and earned the Certified Employee Benefit Specialist designation from the International Foundation for Employee Benefit Plans. I served as Executive Vice President of the firm for a while. As Neil aged and started stepping back, I became the President and Neil took on the role of Chairman. It is four years now since he passed away.

M: And the Teamsters 295 funds are still Savasta clients?

LK: Yes. I've been working for that local for decades now, so they are very near and dear to my heart.

M: The Teamsters 295 funds are lead plaintiffs in a securities class action against AT&T that Pomerantz is litigating. What was your role in signing them on?

LK: Pomerantz provided us with the information needed, the reasons they thought it would benefit the funds to serve as lead plaintiff. We, of course, had to bring it to the board of trustees for the funds, who opted to go forward. There's a good group of trustees on these funds, and the employer side is big corporate. Both the employer side and union side agreed.

M: Is there often friction on boards that are equal parts employer and union trustees?

LK: With some boards, sure, when they come to the table, there is tension on both sides. The trustees on this board, though, have been working together a long time and are a pretty cohesive group, truly interested in pursuing things that will make the members happy and make their lives better.

M: Have you had to devote much time to the litigation in which the Teamsters is lead plaintiff?

LK: No, not at this time. Pomerantz is taking care of almost all the business and daily events that go on within this class action.

M: What common concerns are hearing from your clients now?

LK: There are pension funds that are insolvent, or that are critical and declining. Everyone is anxiously waiting for the Pension Benefit Guaranty Corporation's guidance on the American Rescue Plan, which will be out in mid-July. Many plans will benefit. Pension funds are long-term entities; most are projected to provide benefits for 40 or 50 years. The American Rescue Plan aims to provide pension benefits for 30 years. The funds that are insolvent are really going to get a nice chunk of money that will make a big difference in what they can do with their income and contributions and investments. Considering that the PBGC in October 2020 had projected its own insolvency in 2024 or 2025, this is quite something.

M: If you could make one change to the Taft-Hartley fund plans, what would it be?

LK: I would like to see more awareness among members as to the great benefits that they have. The old timers tend to be more appreciative because they're closer to retirement, but younger members generally take their benefits for granted. A lot of them don't contribute to the premiums – those are paid directly by the employer. A percent of the members' pay goes into their pension and welfare and annuity funds, rather than their paychecks, but they often don't realize what they're receiving in return.

M: How could that change? With education?

LK: Definitely. We do our best, writing regular newsletters for some of our funds. Recently we did an article about a member who passed away without ever changing his beneficiary. So everything he had went to his mother, even though he'd been married for something like twenty years. It was amazing how many phone calls we got after that, with people checking who their beneficiary was or asking for a change of beneficiary form.

M: Is there anything else you would like to mention?

LK: Just that I have enjoyed my career. It turned out that what I thought would be a temporary job evolved into a rewarding, lifelong career.

Linda Kellner's Taft-Hartley Primer

Unlike benefit programs that are sponsored and controlled by one employer for their own employees, multiemployer trust funds – known as Taft-Hartleys – are created for the benefit of collectively bargained employees working for many employers. They are maintained pursuant to a trust agreement and one or more collective bargaining agreements. Employers negotiate the fund into the applicable collective bargaining agreement and agree to contribute to the fund at negotiated, specified rates for the benefit plans (medical, dental, vision, etc.).

Taft-Hartley funds are typically sponsored and administered by joint boards consisting of management trustees representing many organizations, usually within the same or related industries, and labor trustees representing their union.

The Taft-Hartley Act of 1947, also known as the Labor-Management Relations Act, was passed by Congress to regulate organized labor practices and define standards for union pension and benefit funds. Taft-Hartley funds are often the only way a small employer can provide comprehensive health coverage to its employees in a cost-effective manner.

Because multiple employers contribute to the fund for their employees, the costs are shared and the risks are pooled. As a result, multiemployer plans can provide a competitive benefit for the same or better rate when compared to a single employer health plan. And since multiple employers participate in the same fund, employees can move among participating employers without losing coverage, although their benefit plans may differ based on each employer's collective bargaining agreement.

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YEARS

A Seismic Shift in Assessing Losses

Patrick V. Dahlstrom, Senior Counsel

Illicit stock options, a slush fund for executives, an international fugitive on the run and some good, old-fashioned lawyering that wrought justice for defrauded investors. In celebration of the founding of the Pomerantz Firm 85 years ago, the *Monitor* continues its look back at highlights from its history.

In 2006, Pomerantz filed a securities fraud lawsuit against Comverse Technology, Inc. and some of its directors, alleging a stock options backdating scheme by Comverse. Unbeknownst to investors, the company's executives, including its founder and former CEO, Jacob ("Kobi") Alexander, were retroactively "cherry picking" dates when the stock closed at its lowest and falsely claiming that the options were granted on those dates. The exercise prices for the backdated options were thereby based on the stock closing price on the cherry-picked dates. Because the options were, in fact, granted on dates when the market price was higher, backdating placed the options "in the money" the instant they were granted. In some cases, according to the complaint, such grants were made to fictitious employees in order to create a slush fund of backdated options for management to dole out as it pleased.

Investors suffered huge losses when Comverse disclosed its backdating scheme in March and April 2006, as the company's common stock price dropped 20 percent on the heels of the two announcements.

Judge Nicholas G. Garaufis of the Eastern District of New York referred the lead plaintiff motions to U.S. Magistrate Judge Ramon E. Reyes, Jr. The Magistrate Judge denied Pomerantz's motion to be named lead counsel on behalf of the Menorah Group, made up of several Israeli institutional investors, and instead named the Plumbers & Pipefitters National Pension Fund ("P&P") as lead plaintiff.

Pomerantz filed an objection to the Magistrate Judge's Report and Recommendation and appealed his decision to the district court. The Menorah Group based its objection on the fact that most of P&P's losses resulted from "in and out transactions," in that both the purchase and the sale of the shares took place before the alleged misrepresentations were disclosed. The Menorah Group argued that if the "in and out" shares were excluded, P&P did not suffer a $2.9 million loss, but instead actually realized a $132,722 gain. Judge Garaufis agreed, vacated the Magistrate Judge's ruling, and appointed the Menorah Group as lead plaintiff.

In its objection the Firm cited, among other cases, the then-recent Supreme Court decision *Dura Pharmaceuticals, Inc. v. Broudo*. There, the Court clarified the applicable standards for pleading loss causation: a purchaser must have retained shares at the time the truth was disclosed to the market. This ruling, plaintiffs alleged, essentially endorsed the Second Circuit Court of Appeals' decision in *Lentell v. Merrill Lynch & Co., Inc.*, which held that to establish loss causation, a plaintiff must allege "that the misstatement or omission concealed something from the market that, ***when disclosed***, negatively affected the value of the security."

This decision secured by Pomerantz effected a seismic shift in how courts assess plaintiffs' losses at the lead plaintiff stage. Patrick V. Dahlstrom, who led Pomerantz's litigation with Marc I. Gross, stated at the time that the decision "reinforces the growing recognition that courts must conduct such analysis of the facts … and eliminate those losses that are clearly not recoverable, in determining which movant has the largest financial interest."

In December 2009, after years of hard-fought litigation, Comverse and Kobi Alexander agreed to settle the lawsuit for $225 million, with $60 million of that total to come from Alexander's own pockets. The settlement constituted the second-largest recovery ever for shareholders alleging securities fraud claims related to options backdating. The recovery from Alexander was one of the largest ever in a federal securities action from an individual defendant.

After the initial complaints in the action were filed, the three main perpetrators of the fraud – Alexander, CFO David Kreinberg, and General Counsel William F. Sorin – were indicted by the U.S Department of Justice. Rather than surrender to the U.S. Attorney, as he had agreed to do, Alexander fled the country and surfaced months later in Namibia, which did not have an extradition treaty with the United States. Back home in the U.S., his possessions were seized, and he lived as a fugitive from justice, albeit an extraordinarily well-heeled one, for about ten years.

In 2011, Alexander settled the civil charges with the SEC and surrendered bank accounts worth $46 million to federal authorities. In 2016, after a plea bargain, he returned to the U.S. to face criminal charges. In February 2017, he sat in an Eastern District courtroom before Judge Garaufis – a stroke of poetic justice – who sentenced him to 30 months in prison. When Alexander's attorneys requested that he be free on bail prior to sentencing, Judge Garaufis reportedly said, "Spare me – I wasn't born yesterday." A month later, Alexander was transferred to Israel to carry out his remaining sentence; he was released on probation in October 2018 and was not allowed to travel abroad until April 2019. The *Monitor* was unable to confirm reports that he is now living freely in the United States.

POMTRACK® CLASS ACTIONS UPDATE

Pomerantz, through its proprietary PomTrack® system, monitors client portfolios to identify potential claims for securities fraud, and to identify and evaluate clients' potential participation in class action settlements.

NEW CASES

Recently filed securities class action cases filed by various law firms are listed below.
If you believe your fund is affected by any of these cases, contact Pomerantz for a consultation.

CASE NAME	TICKER	CLASS PERIOD	LEAD PLAINTIFF DEADLINE
Canaan, Inc.	CAN	February 10, 2021 to April 9, 2021	June 14, 2021
Credit Suisse Group AG	CS	October 29, 2020 to March 31, 2021	June 15, 2021
Franklin Wireless Corp.	FKWL	September 17, 2020 to April 8, 2021	June 15, 2021
Intrusion, Inc.	INTZ	January 13, 2021 to April 13, 2021	June 15, 2021
Romeo Power, Inc. (f/k/a RMG Acquisition Corp.)	RMO	October 5, 2020 to March 30, 2021	June 15, 2021
Acadia Pharmaceuticals Inc.	ACAD	June 15, 2020 to April 4, 2021	June 18, 2021
Arcimoto Inc.	FUV	February 14, 2018 to March 22, 2021	June 18, 2021
Churchill Capital Corporation IV	CCIV	January 11, 2021 to February 22, 2021	June 18, 2021
Emergent Biosolutions, Inc.	EBS	April 24, 2020 to April 16, 2021	June 18, 2021
Verus International, Inc.	VRUS	June 17, 2019 to October 8, 2020	June 22, 2021
Peloton Interactive, Inc.	PTON	September 11, 2020 to May 5, 2021	June 28, 2021
Pinterest, Inc.	PINS	February 4, 2021 to April 27, 2021	June 28, 2021
Volkswagen AG	VWAGY	March 29, 2021 to March 30, 2021	June 29, 2021
ChemoCentryx, Inc.	CCXI	November 26, 2019 to May 3, 2021	July 6, 2021
Skillz, Inc. f/k/a Flying Eagle Acquisition Corp.	SKLZ	December 16, 2020 to April 19, 2021	July 7, 2021
Aterian, Inc.	ATER	December 1, 2020 to May 3, 2021	July 12, 2021
PureCycle Technologies, Inc.	PCT	November 16, 2020 to May 5, 2021	July 12, 2021
Array Technologies, Inc.	ARRY	October 14, 2020 to May 11, 2021	July 13, 2021
Danimer Scientific, Inc.	DNMR	October 5, 2020 to May 4, 2021	July 13, 2021
ContextLogic, Inc.	WISH	December 16, 2020 to May 12, 2021	July 16, 2021
Ubiquiti, Inc.	UI	January 11, 2021 to March 30, 2021	July 19, 2021
Provention Bio, Inc.	PRVB	November 2, 2020 to April 8, 2021	July 20, 2021
Washington Prime Group, Inc.	WPG	November 5, 2020 to March 4, 2021	July 23, 2021
Nutanix, Inc.	NTNX	November 30, 2017 to May 30, 2019	July 27, 2021
Virgin Galactic Holdings, Inc.	SPCE	October 26, 2019 to April 30, 2021	July 27, 2021

SETTLEMENTS

The following class action settlements were recently announced.
If you purchased securities during the listed class period, you may be eligible to participate in the recovery.

CASE NAME	AMOUNT	CLASS PERIOD	CLAIM FILING DEADLINE
Armstrong Flooring, Inc.	$3,750,000	March 6, 2018 to March 3, 2020	June 20, 2021
FSD Pharma, Inc. (Canada)	$4,127,920	September 20, 2018 to February 6, 2019	June 21, 2021
SAExploration Holdings, Inc.	$3,550,000	March 15, 2016 to February 7, 2020	June 24, 2021
First Choice Healthcare Solutions, Inc.	$1,000,000	April 1, 2014 to November 14, 2018	June 25, 2021
Jaguar Animal Health, Inc.	$2,600,000	June 30, 2017 to July 31, 2017	June 25, 2021
Wells Fargo & Company (SEC)	$500,000,000	November 18, 2012 to September 14, 2016	June 25, 2021
Colt Resources Inc. (Canada)	$745,894	March 15, 2015 to January 30, 2017	July 5, 2021
Bristow Group, Inc.	$6,250,000	February 8, 2018 to February 12, 2019	July 6, 2021
Momo Inc.	$5,000,000	April 20, 2015 to May 10, 2019	July 8, 2021
Universal Health Services, Inc.	$17,500,000	March 2, 2015 to July 25, 2017	July 8, 2021
PG&E Corporation	$10,000,000	December 13, 2018 to October 28, 2019	July 19, 2021
Zynerba Pharmaceuticals, Inc.	$4,000,000	March 11, 201 to September 17, 2019	July 30, 2021
Sterling Bancorp, Inc.	$12,500,000	November 17, 2017 to March 17, 2020	August 10, 2021
Uxin Limited	$9,500,000	June 27, 2018 to April 16, 2019	August 11, 2021
E-mini Index Futures	$15,000,000	March 1, 2012 to October 31, 2014	August 12, 2021
CenturyLink, Inc.	$55,000,000	March 1, 2013 to July 12, 2017	August 13, 2021
NewLink Genetics Corporation	$13,500,000	September 17, 2013 to May 9, 2016	August 16, 2021
Array Biopharma, Inc.	$8,500,000	June 30, 2016 to March 17, 2017	August 17, 2021
YRC Worldwide Inc.	$2,100,000	March 10, 2014 to December 14, 2018	August 17, 2021
Gold Futures/Options (Deutsche Bank /HSBC) (ANTITRUST)	$102,000,000	January 1, 2004 to June 30, 2013	August 23, 2021
Tableau Software, Inc.	$95,000,000	February 5, 2015 to February 4, 2016	August 24, 2021
WageWorks, Inc.	$30,000,000	May 6, 2016 to March 1, 2018	September 14, 2021
Baxter International Inc.	$16,000,000	February 21, 2019 to October 23, 2019	September 16, 2021
Super Micro Computer, Inc. (SEC)	$17,851,056	October 22, 2014 to January 30, 2018	September 18, 2021
ChinaCache International Holdings Ltd.	$1,800,000	April 10, 2015 to May 17, 2019	September 21, 2021
Akazoo S.A.	$4,900,000	January 24, 2019 to May 21, 2020	September 23, 2021
Esperion Therapeutics, Inc.	$18,250,000	August 18, 2015 to September 28, 2015	September 24, 2021
Trevena, Inc.	$8,500,000	May 2, 2016 to October 8, 2018	September 27, 2021
Mexican Gov't Bonds (Antitrust) (Barclays/JPMorgan)	$20,700,000	January 1, 2006 to April 19, 2017	October 13, 2021
Mammoth Energy Services, Inc.	$11,000,000	October 19, 2017 to June 5, 2019	October 30, 2021

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NEW YORK
600 Third Avenue, New York, NY 10016 Tel: +1 212 661 1100 Fax: +1 9174631044
CHICAGO
10 South LaSalle Street, Suite 3505, Chicago, IL 60603 Tel: +1 312 377 1181 Fax: +1 312 377 1184
LOS ANGELES
1100 Glendon Avenue, 15th Floor, Los Angeles, CA 90024 Tel: +1 310 405 7190
PARIS
68, rue du Faubourg Saint-Honoré, 75008 Paris, France Tel: +33 (0) 1 53 43 62 08
TEL AVIV
HaShahar Tower, Ariel Sharon 4, 34th Floor, Givatayim, Israel 5320047 Tel: +972 (0) 3 624 0240

CONTACT US:

We welcome input from our readers. If you have comments or suggestions about *The Pomerantz Monitor*, or would like more information about our firm, please visit our website at www.pomlaw.com or contact.

Jennifer Pafiti, Esq. jpafiti@pomlaw.com +1 310 432 8494
OR
Jeremy A. Lieberman, Esq. jalieberman@pomlaw.com +1 212 661 1100