

## Pomerantz Clears Major Hurdle in Obtaining Justice for Credit Suisse AT1 Bondholders

By Brian Calandra

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On November 13, 2025, Judge Colleen McMahon of the United States District Court for the Southern District of New York granted Pomerantz's motion on behalf of Lead Plaintiff Core Capital Partners, Ltd. to certify a class of all individuals and entities that purchased or acquired additional tier-one bonds ("AT1 Bonds") issued by failed bank Credit Suisse Group AG ("Credit Suisse") within the U.S. between October 27, 2022 and March 20, 2023, in a securities fraud class action captioned *Core Capital v. Credit Suisse, et al.*, No. 23-cv-9287 (CM) (S.D.N.Y.). Judge McMahon's thoughtful and detailed opinion largely adopted Pomerantz's arguments and could provide a roadmap to obtaining class certification for plaintiffs bringing class actions against foreign companies that issue securities overseas that do not trade on a domestic exchange.

### Background

In the wake of the 2008 global financial crisis, new regulations required banks to hold more capital to provide a layer of protection when they run into trouble and prevent taxpayers from bailing them out. AT1 bonds, a type of contingent convertible bonds, were introduced at that time. In a World Economic Forum article in March 2023, Emma Charlton, reporting on Credit Suisse Group's AT1 bonds, wrote:

When a bank goes bust, who pays? The decision to write down [Credit Suisse's] AT1 bonds but pay some money to shareholders angered some investors, who said debt should always rank higher than equity when it comes to taking losses.

Core Capital alleges that investors were duped into purchasing Credit Suisse's AT1 bonds by false or misleading assurances from the the bank and certain of its executives, the defendants in this case, including that customer and asset outflows had slowed or stopped and that the bank was in stable financial condition, when in reality the outflows had continued and the bank had uncovered a material weakness in its internal financial reporting controls. These statements allegedly concealed the risk that

Credit Suisse would cease operations, which materialized when the Swiss Financial Market Supervisory Authority ("FINMA") abruptly forced Credit Suisse to merge with fellow Swiss global financial services company UBS Group AG, and, in the process, ordered Credit Suisse to write down its AT1 bonds from approximately \$372 million to zero.

On July 7, 2025, Judge McMahon denied the defendants' motion to dismiss Core Capital's claims and held that the action could proceed in parallel with *Diabat v. Credit Suisse AG et al.*, a second securities fraud class action arising out of the same facts that was brought on behalf of Credit Suisse equity and corporate bond holders. *Diabat* had abandoned claims by AT1 bondholders. Rather than leave those disenfranchised investors to fend for themselves, Pomerantz recognized the viability of their claims and fought to have the opportunity to vindicate them. In that same July 2025 ruling, Judge McMahon granted the *Diabat* lead plaintiff's motion for class certification largely on the ground that the market for the bank's equity and corporate debt securities was efficient, and thus the class could rely on the "fraud on the market" presumption of reliance.

In the wake of the grant of class certification in *Diabat*, Pomerantz moved to certify a class of AT1 bondholders who purchased AT1 bonds in domestic transactions largely on the grounds that the market for the bonds was efficient and thus AT1 bondholders, like the *Diabat* class members, could rely on the fraud on the market presumption of reliance.

Unlike their opposition to class certification in *Diabat*, which contested the *Diabat* plaintiff's evidence of market efficiency, the defendants' opposition to Core Capital's class certification motion focused on whether the need to show that a transaction occurred domestically and the



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availability of the affirmative defense of estoppel as to certain class members would mean that individualized issues “predominated” over class-wide issues. In the U.S., a party to multiple lawsuits arising out of the same facts is precluded, or “estopped,” from asserting inconsistent theories in the actions. For example, in their opposition to class certification, the defendants hypothesized that a class member who had brought claims in Switzerland could argue that their losses were caused by the Swiss government’s unlawful conduct, while at the same time could assert in the *Core Capital* case that those losses were caused by an undisclosed material weakness in Credit Suisse’s internal controls over financial reporting. According to the defendants, this hypothetical class member should be “estopped” from asserting the latter position in *Core Capital* because the positions were inconsistent, and identifying and resolving potentially inconsistent positions would predominate over class-wide issues. The defendants further argued that Core Capital had failed to show that there were a sufficient number of purchasers of AT1 bonds in domestic transactions for the case to proceed as a class action. Finally, the defendants argued that the existence of thousands of individual actions in Switzerland concerning the write-down of AT1 bonds demonstrated that class members were capable of pursuing their own claims and thus that a class action was not a “superior” means of prosecuting AT1 bondholders’ claims. Judge McMahon considered and rejected each of these arguments and granted Core Capital’s motion.

#### **Numerosity**

Using data from Bloomberg, Core Capital identified at least 229 financial institutions holding AT1 bonds during the class period and thus asserted that the proposed class of AT1 bondholders was sufficiently numerous to warrant treatment as a class action. The defendants countered, however, that the data only identified holders of AT1 bonds, not purchasers of AT1 bonds during the class period. Although Judge McMahon noted that the defendants’ argument was “not without merit,” she rejected it on the grounds that “over 270 U.S. individuals or entities” had brought actions in Switzerland arising out of FINMA’s write-down of AT1 bonds and the evidence Core Capital had submitted of approximately \$15.65 billion in AT1 bonds outstanding and actively traded during the Class Period.

#### **Predominance**

The defendants asserted that individual issues predominated over class-wide issues, and thus class certification was not appropriate because (1) Core Capital could not demonstrate that transaction domesticity was capable of class-wide proof, and (2) positions taken by certain AT1

bondholders in parallel litigation could create additional individualized issues, particularly regarding whether class members may be judicially estopped from advancing specific arguments in future proceedings.

Judge McMahon first held that “even if determining domesticity requires individualized inquiry, these inquiries do not predominate over class-wide issues” because Core Capital had identified multiple reliable methods of proving domesticity, including that U.S.-based purchasers placing orders in the U.S. and purchasing securities from U.S.-based brokers were clearly making domestic transactions, and for other purchasers domesticity could be established using ordinary trading documents, such as purchase orders, brokerage statements, or trade confirmations, supplemented by expert declarations. Judge McMahon then held that the defendants’ assertions regarding potential estoppel defenses “rest[s] on a chain of speculation concerning overlapping parties, hypothetical defenses, and uncertain rulings in foreign jurisdictions, rather than any concrete conflict or individualized issue that is presently before the Court,” and thus was insufficient to show that individual issues would predominate.

#### **Superiority**

The defendants then asserted that Core Capital could not show that a class action was the superior method for vindicating AT1 bond holders’ claims because thousands of parallel lawsuits had been brought against the defendants in the U.S. and Switzerland. In rejecting this argument, Judge McMahon first held that putative class members could always opt out of Core Capital’s action, and thus the ability to pursue an independent action could not defeat superiority on its own. Judge McMahon then observed that the parallel actions cited by the defendants were distinct from Core Capital’s action because they were brought against the Swiss government and challenged the legality of FINMA’s write-down under Swiss law, did not assert U.S. securities fraud claims against Credit Suisse or its officers or directors, and thus presented no risk of conflicting judgments. Judge McMahon concluded by observing that only two cases had been brought in the U.S. that overlapped with Core Capital’s case, which were too few to demonstrate that a class action was not the superior means of litigating AT1 bondholder claims.

#### **Conclusion**

Core Capital’s motion for class certification presented the rare case of a securities class action certification motion that did not focus on market efficiency or price impact. Instead, the defendants seized on circumstances attendant to Core Capital’s case that arose out of the fact that Credit Suisse was a foreign issuer of securities

and that the securities in question did not trade on a U.S. exchange. The defendants' arguments concerning numerosity, predominance, and superiority could be raised in every securities class action involving foreign issuers. By adopting Pomerantz's arguments and resolving these issues in Core Capital's favor, Judge McMahon's ruling may substantially limit the effectiveness of these arguments in similar class actions going forward. ■

## Pomerantz Scores a Win for Fastly Investors

By Murielle Steven Walsh

On September 24, 2025, Pomerantz won a victory for investors in Fastly, Inc., when Judge Tigar of the Northern District of California denied, in part, the defendants' motion to dismiss securities claims against the company.

Fastly operates an edge cloud platform – a system that extends cloud computing services to the “edge” of a network, processing data closer to where it's generated instead of sending it to a central data center – for processing, serving, and securing its customer's applications. An edge cloud enables developers to build, secure, and deliver digital experiences. Fastly's platform includes a Content Delivery Network (“CDN”), or a geographically distributed network of proxy servers and their data centers. Content owners, such as media companies and e-commerce vendors, pay CDN operators to deliver their content to their end users. In other words, Fastly's customers are delivering web experiences, whether in the form of applications, websites, or streaming services.

The bulk of the company's revenues are derived from use of its platform by its existing enterprise customers and its ten largest clients. Enterprise customers are those with annualized current quarter revenue in excess of \$100,000 and include the company's ten largest clients – referred to by a confidential witness as the “big whales” – among which are TikTok, Amazon Video, Apple, Twitter (X), Netflix, Paramount, and Disney. For the fiscal year ended December 31, 2023, roughly 95% of Fastly's revenue was derived from its enterprise customers' use of its platform, with new customers contributing less than 10%.

Thus, a decline in revenue from the company's existing enterprise customers, especially the big whales, or a decline in retention of such customers, could create volatility in the company's revenue and materially impact Fastly's business.

During the class period, Fastly experienced a significant pullback from its customers due to various macroeco-

omic forces, such as rising interest rates, banking instability, and recession fears. As part of its investigation into securities claims against the company, Pomerantz spoke with several confidential witnesses who confirmed that, no later than 2023, customers had become increasingly price-conscious, were demanding aggressive price reductions in contract renewal negotiations, or were not renewing altogether. In addition, customers had begun allocating their business among several vendors instead of concentrating it all with Fastly. Sales personnel reported that they were regularly missing their sales quotas.

Significantly, Fastly's former CEO, Todd Nightingale, acknowledged the customer pullback at an “all-hands” company meeting that occurred right before the first class period statement was made. [Nightingale resigned from Fastly on June 16, 2025, with his advisory role continuing until June 30, 2025. Charles ‘Kip’ Compton, previously Fastly's Chief Product Officer, is the company's new CEO.]

Pomerantz filed an amended complaint against Fastly and certain of its officers and directors, alleging that, despite being aware of this negative trend, when questioned at an earnings call in November 2023, Nightingale falsely denied seeing any macro-effect-driven slowdown in revenue growth from customers, stating that, “My competitors are seeing these effects, some slowing in growth, and we're not seeing that.”

A few months later, during a February 2024 earnings call about Q4 2023 results, which reported Q4 2023 revenues on the lower end of expected guidance, Nightingale blamed the shortfall on “weaker than anticipated international traffic,” when in fact it resulted from the alleged general customer pullback. When pressed again on whether macro forces were negatively affecting the company, he again denied and downplayed any downturn. On that news, Fastly's stock price fell 30.59%.

The amended complaint also alleges that the company's 10-K failed to disclose the negative trend/uncertainty among Fastly's customers, thereby violating Item 303, and that its risk disclosures were false and misleading because they only warned of the potential for harm to the business if customers did not continue to use and increase their usage of the platform, but left out material information about the current stagnation and decline in customer usage.

The court upheld all of the above statements on grounds of falsity and scienter. Judge Tigar ultimately dismissed all but one of the otherwise sufficiently alleged misstatements on loss causation grounds, finding that the alleged corrective disclosures were not corrective of the prior misstatements. However, he did not consider these statements under a materialization of the risk analysis. The court therefore granted plaintiffs leave to amend. Pomerantz is

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preparing a second amended complaint to further bolster its case for loss causation. ■

## Pomerantz Prevails Against Amylyx Pharmaceuticals

By Samantha Daniels

On September 30, 2025, Pomerantz secured a victory on behalf of a proposed class of investors in Amylyx Pharmaceuticals, Inc. (“Amylyx”), defeating the defendants’ motion to dismiss securities fraud claims related to Amylyx’s commercial launch of its drug, Relyvrio, a purported answer to the unmet need to address amyotrophic lateral sclerosis (“ALS”).

Judge Gordon (D. Mass) denied the defendants’ motion to dismiss on the papers, without a hearing.

### The Unmet Need for an ALS Cure

What began in 2014 as a simple call for participants to pour ice water over themselves soon became one of the most viral global social media challenges of the decade. The “ALS Ice Bucket Challenge” spread rapidly across social media, combining humor with advocacy and yielding a remarkable increase in public awareness to find a cure for ALS.

Fast forward to 2025, and there is still no cure for ALS, or even a drug that can mitigate the severe and life-threatening symptoms of this rare disease. The initial manifestations range from muscle weakness of the limbs to difficulty with speech and swallowing. Over time, patients develop muscle paralysis, inability to speak or swallow, and respiratory failure leading to certain death in only 2 to 5 years.

About 30,000 people in the U.S., and more than 200,000 worldwide, suffer from this debilitating disease. And universally, diagnosis is a shock: more than 90% of people living with ALS have no family history of the disease, and it can strike adults at nearly any age.

### Amylyx Misleads the Market About Offering Unprecedented Hope for Addressing ALS

In October 2022, Amylyx, a biotechnology company developing treatment for ALS, commercially launched its flagship drug agent, Relyvrio, offering unprecedented hope for those suffering from ALS. Amylyx touted that “[Relyvrio] is the first drug candidate to show both a functional and survival benefit in a large-scale clinical trial.”

Typically, drugs that require approval from the Food and Drug Administration (“FDA”) must pass three challenging clinical trials, called “phases,” before they become commercially available. Due to the unmet need in the market for an effective ALS treatment, the FDA approved Relyvrio for commercial use while it was still undergoing its Phase III trial. The FDA approved Relyvrio in September 2022, and the drug went on the market the following month. The Phase III trial was to assess whether the drug was effective as compared to a placebo.

Given the devastating nature of ALS—and the lack of any viable treatment options—when Relyvrio was first launched, it was understood there would be an initial rush (or “bolus”) in demand and new patient subscriptions. Publicly, the defendants appeared to make good on the promise to help those with ALS. Throughout the launch, from October 2022 to over a year later, in November 2023, the defendants lauded the launch’s success and the near- and long-term ability for Relyvrio’s growth.

But as pled in the Amended Complaint, behind the scenes, the defendants failed to warn of an early, sharp decline in both new subscribers and patient discontinuations that would tank the posited hope for those suffering from ALS. Rather, the defendants were reporting the “net patient subscribers,” a metric that misleadingly omitted the high rate of discontinuations. For instance, at the peak “bolus” of demand around February and March 2023, a former employee revealed that there were 9,000 patients on Relyvrio. However, by May and August 2023, the defendants were reporting “net patients” on therapy at 3,000 and 3,800 respectively and assured the market that “strong demand” for therapy remained, given that 30,000 people suffer from ALS, and that it was still “too early to tell” the rate of discontinuation. Indeed, when asked about any discontinuations, the defendants responded that their metrics reported net patients on therapy, which they claimed was inclusive of any discontinuations, and that it was still a little early to identify long-term trends. In truth, as pled in the Amended Complaint, Relyvrio was causing significant side effects (including uncontrolled GI issues) while failing to manage or ameliorate the disease.

The truth began to emerge on November 9, 2023, when the defendants issued a press release reporting that a slowdown in new subscribers and an increase in discontinuations had resulted in a failure to meet anticipated Q3 2023 earnings. The defendants admitted that only 60% of patients remained in treatment after six months; corporate share value fell more than 30% in response to that news.

In March 2024, the defendants reported that the drug had failed to produce meaningful results in its Phase III trials, revealing that Relyvrio “failed to slow the progression of the disease,” and “made no significant difference versus a



Samantha Daniels, Of Counsel

placebo in terms of helping patients perform daily living tasks such as walking and breathing.” The share price fell another 80% and, shortly thereafter, the defendants announced that they would withdraw Relyvrio from the market.

Judge Gordon (D. Mass.) denied the defendants’ motion to dismiss, upholding the May and August 2023 misstatements cited in the plaintiffs’ pleadings about the number of net patients on therapy, the rates of discontinuation, and growth opportunities for the drug.

This Court found that “plaintiffs have adequately alleged material misrepresentations with respect to forward-looking statements made in May and August 2023 that discuss growth opportunities within the ALS community.” As the Court reasoned, “[t]aking all well-pled factual allegations as true, 9,000 patients had been prescribed Relyvrio by the time of the peak of the bolus,” meaning that by the time defendants were reporting on net subscribers in May and August, “more than 5,000 of the total 9,000 subscribers had discontinued treatment,” which “represents a discontinuation rate of over 50% and indicates that there was significantly less potential for new subscribers.” As such, “[t]he omission of this data could therefore be found to have rendered defendants’ assertions regarding Relyvrio’s growth potential materially misleading.”

Judge Gordon also concluded that the plaintiffs met the burden of pleading scienter. “Because the net subscriber metric was inclusive of all discontinuations, defendants would have been aware of those negative indications when calculating and reporting that metric.” Over the defendants’ objection, the Court credited the former employee’s statement that 9,000 patients were on the drug at the bolus given that “the particular employee oversaw the company’s entire West Coast business operation and was responsible for 25% of the company’s revenue,” and “[i]t is plausible that such an employee would know what management knew with respect to the market status of their product.” The plaintiffs “also pled that defendants were tracking discontinuations in real time, which would establish that management had direct knowledge of the high number of discontinuations.” The plaintiffs continue pursuing recovery for Amylyx investors. ■

## Dexit Averted? Corporate (Re-) Domestication After SB 21

By Ankita Sangwan and Arsalan Jamal

Since mid-2024, several high-profile companies left

Delaware, citing a series of rulings from the Court of Chancery that they perceive as insufficiently protective of corporate decision-making. Those include SpaceX and Tesla, which both reincorporated in Texas, and Dropbox, which moved to Nevada.

In response, Delaware recently amended the Delaware General Corporation Law (“DGCL”) with what is commonly referred to as Senate Bill 21 (“SB 21”). The most consequential corporate law reform in decades, SB 21 claims to provide greater clarity and predictability to corporate fiduciaries.

Responses to SB 21 have been decidedly mixed, with some dubbing it “the billionaire’s bill.” Further, while some Chancery Court watchers characterize the defections, or “Dexit,” as a trend, others are confident that the Delaware Court, with its many strengths, will continue to dominate corporate incorporations.

On November 11, 2025, the Benjamin N. Cardozo School of Law’s Heyman Center for Corporate Governance hosted a CLE program titled “Dexit Averted? Corporate (Re-) Domestication After SB21.” Moderated by Gustavo Bruckner of Pomerantz, the panel featured leading attorneys and corporate governance scholars to discuss the long-term implications of SB 21, whether corporations are truly “fleeing” Delaware, the potential impact of SB 21 on shareholder litigation, and how other states such as Nevada and Texas have positioned themselves as alternative business-friendly jurisdictions. Following is a summary of the program.

### What is SB 21?

SB 21 amends two key sections of the DGCL.

- Section 144: SB 21 amends this section to establish three safe harbors for conflicted transactions that, if met, insulate a director or officer from equitable relief and awards of damages for claims based on alleged breaches of fiduciary duties. These provide a far less demanding standard of judicial review than Delaware’s “entire fairness” standard. The points below are excerpted from the Original Synopsis of SB 21 by the Delaware General Assembly. The amendments:
  - provide safe harbor procedures for acts or transactions in which one or more directors or officers as well as controlling stockholders and members of control groups have interests or relationships that might render them interested or not independent with respect to the act or transaction.
  - define what parties constitute a controlling

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Ankita Sangwan, Associate

stockholder or control group and provide safe harbor procedures that can be followed to insulate from challenge specified acts or transactions from which a controlling stockholder or control group receives a unique benefit.

- provide that controlling stockholders and control groups, in their capacity as such, cannot be liable for monetary damages for breach of the duty of care. The amendments do not displace any safe harbor procedures or other protections available at common law.
- Section 220: This section has been amended so that the materials available to shareholders pursuant to books-and-records demands are more narrowly circumscribed outside of certain specific exceptions.

### Are Companies Really Leaving Delaware?

During the 2025 proxy season, 18 of 28 companies (64.3%) with reincorporation proposals on their ballots proposed leaving Delaware (vs 23.5% in 2024) — most for Nevada, and a few for Texas. Many of these proposals involved companies with controlling shareholders.

Still, the panel agreed that despite headline-grabbing moves like Tesla’s departure, the predicted wave of reincorporation did not materialize. Delaware’s deep precedent and specialized courts continue to be the leading factors behind its enduring dominance for corporate incorporation.

### Has SB 21 impacted or changed corporate decision-making?

The panelists were split. While Edward Rock of NYU and Eric Talley of Columbia called SB 21 a major shift expanding corporation discretion, Phil Richter of Fried Frank noted that real-world impact may remain modest until Delaware courts weigh in.

### How Are Other States Responding?

Texas and Nevada, in recent developments and in reaction to SB 21, have updated their statutes to appear more “corporate friendly,” with Nevada even moving toward a business court modeled on the Court of Chancery. Several public companies—including Fidelity National Financial, Roblox, AMC Networks, Sphere Entertainment, and Tempus AI—have recently relocated to Nevada.

However, Richter highlighted two reasons Delaware continues to dominate: (1) extensive legal precedent; and (2) document precedent. He emphasized that Delaware’s extensive and well-developed body of case law provides

attorneys with consistency and predictability when novel issues arise—an essential foundation for informed corporate decision-making. Richter also noted that Delaware leads in what he termed “document precedence,” referring to the widespread standardization and “Delawarization” of corporate documents. This uniformity enables lawyers to prepare materials for courts and opposing counsel with greater accuracy and efficiency.

Together, these make relocating a riskier and costlier proposition.

“...SB 21’s impact will only become clear as courts apply it in practice.”

### Case to Watch: *Rutledge v. Clearway Energy Group LLC* (2025)

A pending Delaware Supreme Court case—the first major test of SB 21—may determine the statute’s constitutionality and the broad nature of its safe harbor provisions. In *Clearway*, the Court will decide whether the safe harbors created by SB 21 violate the Delaware Constitution by improperly stripping the Court of Chancery of its equitable jurisdiction.

### Final Thoughts

Panelists noted that Delaware corporate law evolved incrementally through landmark cases, and SB 21’s impact will only become clear as courts apply it in practice. By comparison, states like Nevada and Texas lack the depth of precedent that provides predictability in Delaware, making it harder for them to attract companies considering reincorporation.

As Delaware courts begin shaping SB 21 through cases like *Clearway*, Pomerantz continues to monitor developments. Says Gustavo Bruckner, Partner and head of the firm’s Corporate Governance practice, “Pomerantz remains committed to protecting the rights of our stockholder clients and will continue to be vigilant at legislative efforts seeking to limit those rights.” ■



Jennifer Pafiti



Jeremy A. Lieberman



Janalee Spencer



Dr. Daniel Summerfield



Michael Grunfeld

## NOTABLE DATES ON THE POMERANTZ HORIZON

**IF YOU WILL BE ATTENDING ANY OF THESE EVENTS AND WOULD LIKE TO MEET WITH US, SEND US A MESSAGE AT: [EVENTS@POMLAW.COM](mailto:EVENTS@POMLAW.COM)**

**JANALEE SPENCER** will attend the **Opal Group's Public Fund Summit** in Scottsdale, Arizona on January 6–7.

**JENNIFER PAFITI** and **JANALEE** will attend **KORIED's Plan Sponsor Educational Institute** in Key West, Florida on January 20–23.

**DANIEL SUMMERFIELD** will attend **The Investor Forum's Annual Review** in London, the UK, on January 22. **DANIEL** will also attend **Net Zero Investor's Defined Contribution Forum** on January 29 in London.

**MICHAEL GRUNFELD** will speak on a panel about securities litigation trends at the **New York City Bar Association's Annual Securities Litigation & Enforcement Conference** in New York City, New York on February 4.

**JANALEE** will attend **Opal Group's Investment Education Symposium** in conjunction with the **Louisiana Trustee Education Council (LATEC)** in New Orleans, Louisiana on February 10–13.

**JEREMY LIEBERMAN** will speak about The Impact of Israeli Institutional Investors on U.S. Securities Class Actions at **Pomerantz LLP's Law & Current Affairs Conference** in Tel Aviv, Israel on February 24.

# POMERANTZ LLP

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Pomerantz is acknowledged as a global leader in securities and corporate governance litigation. Pomerantz monitors the portfolios of some of the most influential institutional investors and financial institutions worldwide, monitoring assets in excess of \$9.5 trillion. Founded by Abraham L. Pomerantz, who was known as the “dean of the class action bar,” the Firm pioneered the field of securities class actions. For nearly 90 years and counting, Pomerantz has continued the tradition that Abe Pomerantz established, fighting for the rights of victims of securities fraud, breaches of fiduciary duty, and corporate misconduct. Prior results, however, do not guarantee a similar outcome in future cases.

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