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Supreme Court Issues Important Securities Class Action Decision

On June 23, the U.S. Supreme Court issued its much-anticipated decision in *Halliburton Co. v. Erica P. John Fund*, No. 13-317, 573 U.S. __ (2014) ("*Halliburton*"). The Court held that defendants in securities fraud class actions may rebut the presumption of investor reliance on public and material misrepresentations before class certification, by presenting evidence that the alleged misrepresentations did not actually affect the stock price. However, the Court rejected arguments that the presumption should be replaced with a requirement that plaintiffs prove actual reliance on the alleged misrepresentations.

The State of the Law Before *Halliburton*

In *Basic v. Levinson*, 485 U.S. 224 (1998) ("*Basic*"), the Supreme Court adopted the fraud-on-the-market theory and established the general presumption that stock prices in an efficient market reflect all public and material information. Since *Basic*, plaintiffs in securities fraud class actions have invoked this presumption to establish reliance on material misrepresentations when purchasing or selling stocks. Some circuits precluded defendants from introducing evidence to rebut the *Basic* presumption until after class certification. By then, however, it is usually too late. Once a class is certified, a defendant often is pressured to settle even untenable claims.

The State of the Law After *Halliburton*

In *Halliburton*, the Supreme Court held that defendants may rebut the *Basic* presumption before class certification, with evidence that the alleged misrepresentation did not affect the stock price.[1] The Court concluded that before class certification, courts should not ignore direct evidence that the *Basic* presumption did not apply. However, the Court rejected arguments that the *Basic* presumption should be abandoned entirely. The Court concluded that Halliburton's claims that the presumption was inconsistent with congressional intent or with recent developments in economic theory did not justify overturning its earlier precedent. As a result, the *Basic* presumption of investor reliance on public and material misrepresentations remains intact.

The Potential Impact of *Halliburton*

The *Halliburton* decision would have marked a sea change had it eliminated the *Basic* presumption. Because the Court will enable defendants to rebut the presumption before class certification, the

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decision's more modest impact may be to deter some untenable claims by securities fraud plaintiffs by providing defendants with an additional tool to fend off class certification. The lower federal courts will have to sort out what evidence is sufficient for a defendant to show the absence of price impact in order to rebut the *Basic* presumption. With price impact issues front and center, class certification proceedings are likely to see more intense litigation involving discovery, expert studies and the like.

[1] The precise scope of the Court's holding that defendants can present evidence to rebut the presumption "before class certification" remains unclear. Lower courts will have to decide whether "before class certification" means (1) at the class certification stage before a class is certified, or (2) at any time prior to class certification (including the motion-to-dismiss stage).

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