



Supreme Court Rules on Proof of Materiality for Class Certification

Posted by Noam Noked, co-editor, HLS Forum on Corporate Governance and Financial Regulation, on Friday March 1, 2013

Editor's Note: The following post comes to us from [Jay B. Kasner](#), head of the Securities Litigation Practice at Skadden, Arps, Slate, Meagher & Flom, and is based on a Skadden memorandum by Mr. Kasner, [Peter B. Morrison](#), [Matthew J. Matule](#), and [Edward B. Micheletti](#).

On February 27, 2013, in a 6-3 decision, the Supreme Court of the United States held in *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds* that a securities fraud plaintiff alleging fraud on the market need not establish the materiality of an alleged fraudulent statement in order to obtain class certification. Justice Ginsburg delivered the opinion of the Court, and Justices Scalia, Thomas and Kennedy dissented.

The particular questions presented by the Supreme Court's grant of *certiorari* were whether, in a misrepresentation case under SEC Rule 10b-5, a securities fraud plaintiff alleging fraud on the market must establish materiality of the misstatements in order to obtain class certification and whether, in such a case, the district court must allow the defendant to present evidence rebutting the applicability of the fraud-on-the-market theory before certifying a plaintiff class based on that theory.

The Supreme Court held that establishing the materiality of the alleged fraudulent statement is not necessary; it is enough to show that the security in question was traded in an efficient market and that the alleged fraudulent statement became public. Having made that showing, the plaintiff could invoke the fraud-on-the-market presumption of reliance and thus represent a class of shareholders. The Court explained that "Rule 23(b)(3) requires a showing that *questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class. ... The alleged misrepresentations and omissions, whether material or immaterial, would be so equally for all investors composing the class."

The Supreme Court further held that rebuttal of the fraud-on-the-market presumption of reliance is appropriate at the class certification stage if it would disprove commonality of the class members' reliance; rebuttal evidence on materiality does not disprove commonality.

The Supreme Court's holding affirmed the Ninth Circuit, resolving an existing split between the First, Second and Fifth Circuits and the Third, Seventh and Ninth Circuits.

Click [here](#) to view the opinion.