

June 23, 2014**Supreme Court Allows Rebuttal of Fraud on the Market at Class Certification Stage in *Halliburton Co. v. Erica P. John Fund, No. 13-317***

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The Supreme Court of the United States today in *Halliburton Co. v. Erica P. John Fund* upheld the fraud-on-the-market presumption of reliance first recognized by the Court in *Basic v. Levinson*, but gave defendants a new tool for challenging class certification in fraud-on-the-market cases. The Court held that defendants may introduce evidence of lack of price impact at the class certification stage in order to rebut the presumption of market efficiency. Justice John Roberts delivered the opinion of the Court, joined by Justices Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan. Justice Clarence Thomas filed an opinion concurring in the judgment, in which Justices Antonin Scalia and Samuel Alito joined.

Basic opened the door to securities class action litigation by holding that plaintiffs are entitled to a class-wide presumption of reliance if the securities at issue were traded in an efficient market, and thus the alleged misrepresentations were analyzed by the market and reflected by the market price. In the absence of the presumption of reliance, plaintiffs would be required to demonstrate "eyeball reliance" on each alleged misrepresentation on an investor-by-investor basis, effectively precluding class treatment.

The Court today upheld the fraud-on-the-market presumption of reliance, but held that defendants must be afforded an opportunity before class certification to defeat the presumption through evidence that an alleged misrepresentation did not actually affect the market price of the stock. Defendants may seek to defeat the *Basic* presumption through direct, as well as indirect, price impact evidence. Thus, the Court vacated the Fifth Circuit's decision that evidence of price impact could not be introduced at the class certification stage and remanded for further proceedings.

The decision today gives defendants a potentially powerful new tool for challenging the use of *Basic*'s presumption of reliance at the class certification stage.