Securities Act and Exchange Act Liability Provisions

A Practical Guidance® Practice Note by Jay B. Kasner, William J. O'Brien, Andrew R. Beatty, and Robert A. Fumerton, Skadden, Arps, Slate, Meagher & Flom LLP

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This practice note provides an overview of the liability provisions under the Securities Act of 1933, as amended (Securities Act), and the Securities Exchange Act of 1934, as amended (Exchange Act and, collectively with the Securities Act, the Acts). Together, the Acts form the backbone of modern securities litigation, with the potential to create civil liability for corporate issuers and individuals alike.

Securities litigation is a dynamic, constantly evolving field whose development relies on two pillars—one legislative and one judicial. In the 1930s, Congress, through its passage of the Acts, gave birth to a civil liability regime that it has continued to amend through the Private Securities Litigation Reform Act (the PSLRA) (104 P.L. 67), Securities Litigation Uniform Standards Act of 1998 (SLUSA), and other enactments. At the same time, the federal judiciary—including the Supreme Court—has played an active, integral role in construing how the Acts should be applied, as evidenced by the thousands of decisions it issues every year. It is, therefore, essential for securities practitioners to develop a comprehensive understanding of both the statutory and decisional law, with an emphasis on the jurisdiction in which your particular case is pending.

In order to help you better understand the contours of the civil liability provisions under the Acts, this practice note discusses recent trends and provides historical background and legislative context by summarizing:

- The current state of private securities litigation, as reflected in the most recent filing statistics and trends
- The instrumental role played by the U.S. Congress in both enacting and later modifying the Act's civil liability provisions
- How today's U.S. Supreme Court has clarified and refined securities litigation jurisprudence

For additional information on liability under the Acts and step-by-step practical guidance on securities litigation, see Section 11 Elements and Defenses under the Securities Act, Section 12(a)(2) Elements and Defenses under the Securities Act, Control Person Liability, Reliance in Securities Fraud Actions, Materiality in Securities Fraud Actions, Scienter Defenses in Securities Fraud Actions, Special Litigation Committees, Securities Litigation under the Private Securities Litigation Reform Act (PSLRA), U.S. Supreme Court Securities Litigation Decisions, Defense Strategies under the Securities

Act, Jurisdictional Defenses under the Exchange Act, Jurisdictional Defenses under the Securities Act, Liability under the Federal Securities Laws for Securities Offerings, Liability for Securities Offerings Checklist, and U.S. Securities Laws.

Private Securities Litigation Remains Near at an All-Time High

Forty-five years ago, then-Supreme Court justice William Rehnquist described the extent to which securities litigation had expanded since 1946, when a federal court first recognized an implied private right of action under Rule 10b-5 (17 C.F.R. § 240.10b-5): "When we deal with private actions under Rule 10b-5, we deal with a judicial oak which has grown from little more than a legislative acorn." Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 737 (1975). Since then, this judicial oak has continued to branch out and reach for the sky. Indeed, private securities litigation today has become an ever-present risk for corporations both large and small, in industries that cut across the economic spectrum.

That risk is reflected in recent filing statistics. From 2017 to 2019, private plaintiffs filed an average of 424 class action securities litigation lawsuits in state and federal court. Due at least in part to the novel coronavirus pandemic, the pace of filings has slowed over the past two years. Cornerstone Research reports that 333 class action securities lawsuits were filed in 2020 and only 218 were filed in 2021. Additionally, Cornerstone Research reports that in 2019, 4.2% of U.S. exchange-listed companies were targeted by a federal securities lawsuit, down from a record high of 8.9% in 2019. Cornerstone reports that plaintiffs filed 110 new class action securities filings across federal and state courts in the first half of 2022, consistent with the rate of filings in 2021.

The Legislative Origins of Modern Securities Litigation

The modern era of securities litigation can be traced back to the Great Depression, when Congress gave birth to the Acts. The Acts reflect the general philosophy of providing the investing public with full disclosure in securities offerings materials, as well as other written and oral statements. Under certain circumstances, the Acts entitle investors to remedies if they are damaged by disclosures that contain material misstatements or omissions of material facts. For more information, see Liability under the Federal Securities Laws for Securities Offerings.

Sections 11 and 12 of the Securities Act and Section 10(b) of the Exchange Act

Since the inception of the federal securities laws, the majority of core securities litigation filings (i.e., those that exclude merger and acquisition-related filings) have arisen under Sections 11 (15 U.S.C. § 77k) or 12 (15 U.S.C. § 77l) of the Securities Act or Section 10(b) (15 U.S.C. § 78j(b)) of the Exchange Act. As to the Securities Act:

- Section 11(a) creates a private right of action for purchasers of securities based on the contents of a registration statement. Specifically, purchasers can sue if the registration statement contains an untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading. See 15 U.S.C. § 77k(a).
- Section 12(a)(1) provides liability for those who violate Section 5 of the Securities Act, which concerns registration with the Securities and Exchange Commission (SEC). 15 U.S.C. § 77l(a)(1); see also 15 U.S.C. § 77e.
- Section 12(a)(2) imposes liability under similar circumstances as Section 11 against certain statutory sellers for misstatements or omissions in a prospectus or oral communication. See NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co., 693 F.3d 145, 156 (2d Cir. 2012); see also 15 U.S.C. § 77l(a)(2).

For a more detailed discussion of the elements and defenses for Section 11 and 12 claims, see Section 11 Elements and Defenses under the Securities Act and Section 12(a)(2) Elements and Defenses under the Securities Act.

Unlike Sections 11 and 12 of the Securities Act, the anti-fraud provisions of the Exchange Act—including Section 10(b) thereof—do not expressly authorize private investors to sue. In 1971, however, the Supreme Court implied such a right—albeit in a footnote. See Superintendent of Ins. v. Bankers Life & Casualty Co., 404 U.S. 6, 13 n.9 (1971) ("It is now established that a private right of action is implied under § 10(b)."). Four years later, in *Blue Chip Stamps*, the Court reaffirmed the private right of action under Rule 10b-5 while, at the same time, limiting its availability "to actual purchasers and sellers of securities." See Blue Chip Stamps, 421 U.S. at 730.

The implied private right of action enshrined in Section 10(b) makes up the bulk of the Exchange Act's civil litigation—in part due to the breadth of conduct it covers. The statute, by its terms, makes it unlawful "[t]o use or employ, in connection with the purchase or sale of any security registered on a national securities exchange[,] . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange]

Commission may prescribe." 15 U.S.C. § 78j(b). Rule 10b-5, which was promulgated by the SEC under Section 10(b), creates liability for "mak[ing] any untrue statement of material fact or . . . omit[ting] to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 17 C.F.R. § 240.10b-5(b).

For additional information on Section 10(b) claims, see {Loss Causation in Securities Fraud Actions}, Materiality in Securities Fraud Actions, Reliance in Securities Fraud Actions, Scienter Defenses in Securities Fraud Actions, Jurisdictional Defenses under the Exchange Act, and Defense Strategies under the Securities Act.

PSLRA

Congress placed several constraints on the private right of action in 1995, when it enacted the PSLRA. 15 U.S.C. §§ 77z-1 and 78u-4. The PSLRA was "targeted at perceived abuses of the class action vehicle in litigation involving nationally traded securities." Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71, 81 (2006). As Congress observed during its deliberations on the legislation, "the investing public and the entire U.S. economy [had] been injured by . . . baseless and extortionate securities lawsuits." H.R. Conf. Rep. 104-369, p. 31–32 (1995). These practices had reached their apex during the early 1990s, when "nuisance filings, [the] targeting of deep-pocket defendants, [and] vexatious discovery requests . . . had become rampant." Dabit, 547 U.S. at 81 (quoting H.R. Conf. Rep. 104-369, p. 31).

To curb these abuses, the PSLRA:

- Limited recoverable damages and attorney's fees
- Provided a "safe harbor" for forward-looking statements
- Imposed new restrictions on the selection of (and compensation awarded to) lead plaintiffs
- Mandated the imposition of sanctions for frivolous litigation
- Authorized a stay of discovery pending resolution of any motion to dismiss
- Imposed heightened pleading requirements in actions brought pursuant to Section 10(b) and Rule 10b-5

The heightened pleading requirements were especially vital, as they forced securities fraud plaintiffs to do all of the following:

- Specify each misleading statement
- Set forth the facts on which a belief that a statement is misleading was formed
- State with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind

See Dura Pharms., Inc. v. Broudo, 544 U.S. 336, 345–246 (2005) (quoting 15 U.S.C. § 78u-4(b)(1), (2), (4)). For additional guidance on the PSLRA, see Securities Litigation under the Private Securities Litigation Reform Act (PSLRA).

SLUSA

The heightened pleading standards armed defendants with a powerful tool for combating federal securities lawsuits at the motion to dismiss stage—a key inflection point in most (if not all) such actions. These measures, however, proved too effective in a sense, as they caused many plaintiffs to file substantially similar actions in state court, a phenomenon which "had previously been rare." See Dabit, 547 U.S. at 82.

To close this loophole, Congress passed the SLUSA. 15 U.S.C. § 78bb(f)(1)(A). SLUSA's objective was to "stem this 'shif[t] from Federal to State courts' and 'prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of' the [PSLRA]." Dabit, 547 U.S. at 82 (quoting SLUSA § 2(2), (5)). To do so, SLUSA prevented plaintiffs from filing class actions in "any State or Federal court by any private party" if the lawsuit met all of the following criteria:

- Sought damages on behalf of more than 50 people
- Was "based upon the statutory or common law of any State"
- Alleged misrepresentations of fact, omissions of fact, manipulative conduct, or deception in connection with the purchase or sale of a "covered security" (i.e., one that was "listed, or authorized for listing, on a national securities exchange")

See 15 U.S.C. § 78bb(f)(1); 15 U.S.C. § 77r(b)(1)(A). SLUSA also authorized removal to federal district court of any suit that fell within the scope of its preclusion provision. 15 U.S.C. § 77p(c). For additional discussion of SLUSA, see Jurisdictional Defenses under the Securities Act.

Securities Act Class Actions in State Courts

Plaintiffs sought to blunt the effects of SLUSA (and evade the PSLRA's heightened pleading requirements) by filing Securities Act class actions in state courts. Once there, plaintiffs argued that the Securities Act not only grants concurrent state court jurisdiction for civil actions alleging violations of its liability provisions, but also bars such actions from being removed to federal court pursuant to Section 22(a) of the Securities Act. See 15 U.S.C. § 77v(a). In the years that followed, courts disagreed as to whether

the Securities Act's concurrent jurisdiction and removal provisions allowed plaintiffs to engage in this procedural gambit when only federal law claims were at issue. The end result was a patchwork of different rules throughout the country.

The Supreme Court clarified the law in 2018, when it decided Cyan, Inc. v. Beaver Cty. Emples. Ret. Fund, 138 S. Ct. 1061 (2018). In *Cyan*, the Court held that Section 22(a) in fact does bar defendants from removing complaints that only bring Securities Act claims. This holding has led to an increase in Securities Act-only class actions being filed in state court—which, in turn, has spawned a host of complications, including a risk that parallel proceedings will be filed in federal court.

The Supreme Court's Ongoing Role in Securities Litigation

As *Cyan* illustrates, Congress is not the only arm of government that has shaped securities litigation. The Supreme Court has also played a pivotal role, which continues through today. Indeed, ever since John G. Roberts became chief justice in 2005, the high court has regularly weighed in on securities-related disputes between corporate defendants and the plaintiffs' bar—typically hearing at least one such case per term.

Below are some key securities-related decisions issued by the Roberts Court in the past 15 years. Together, they have had (and continue to have) a profound impact on the liability provisions of the Acts, as reflected in the thousands of lower court opinions that have interpreted them. To take just one example, the Court's 2007 ruling in Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308 (2007) has been cited over 8,700 times in the past 13 years—a testament not only to its lasting significance, but also to the Court's influence over securities litigation more generally.

A more thorough discussion of these and other rulings can be found in Supreme Court Securities Litigation Decisions.

Tellabs

One landmark decision with enduring influence is *Tellabs*, which addressed the pleading standard for scienter—that is, a mental state embracing "the defendant's intention 'to deceive, manipulate, or defraud." Tellabs, Inc., 551 U.S. at 313 (quoting Ernst & Ernst v. Hochfelder, 425 U.S. 185, 194 (1976)). In *Tellabs*, the Court held that in order to plead the strong inference of scienter required by the PSLRA, the inference being advanced "must be more than merely plausible or reasonable—it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent." Tellabs, Inc., 551 U.S. at 314. Ever since, this bedrock principle has served as a key reference point in adjudicating hundreds if not thousands of motions to dismiss throughout the federal court system. For a full breakdown of these issues, see Scienter Defenses in Securities Fraud Actions.

Omnicare

Another influential opinion is Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund, 575 U.S. 175 (2015), which clarified the scope of liability for expressions of opinion. In *Omnicare*, the Court held that a defendant's statement of opinion is an actionable misstatement or omission under the Acts only if one of the following is true:

- The speaker did not hold the professed belief.
- The supporting facts supplied were untrue.
- The speaker omitted information whose omission made the statement misleading to a reasonable investor.

See Shreiber v. Synacor, Inc., 2020 U.S. App. LEXIS 33535, at *3 (2d Cir. Oct. 22, 2020) (quoting Tongue v. Sanofi, 816 F.3d 199, 210 (2d Cir. 2016)). As to the third "omissions" prong, the Court in *Omnicare* made clear that an investor "must identify particular (and material) facts going to the basis for the issuer's opinion—facts about the inquiry the issuer did or did not conduct or the knowledge it did or did not have—whose omission makes the opinion statement at issue misleading to a reasonable person reading the statement fairly and in context." Omnicare, Inc., 575 U.S. at 194.

Class Certification

Class certification has also been a frequent battleground, with the Roberts Court issuing three major decisions in the last decade. The first came in 2011, when the Court ruled, in Erica P. John Fund, Inc. v. Halliburton Co., 563 U.S. 804, 807 (2011), that "securities fraud plaintiffs [need not] prove loss causation in order to obtain class certification." Then, in 2013, a divided Court held that "plaintiffs are not required to prove materiality at the class-certification stage." Amgen Inc. v. Conn. Ret. Plans & Trust Funds, 568 U.S. 455, 468 (2013). In both cases, plaintiffs had invoked the "fraud on the market" presumption of reliance established in Basic Inc. v. Levinson, 485 U.S. 224 (1988), as a way to establish that "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). And in both cases, the Court was grappling with what a plaintiff must show to meet this requirement.

A defendant's right to rebut the Basic presumption at class certification, by contrast, was not squarely addressed until the Court decided Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258, 279–83 (2014) (Halliburton II). In *Halliburton II*,

the Court confirmed that defendants have the right to rebut the Basic presumption of reliance prior to class certification "through direct as well as indirect price impact evidence." Halliburton II, 573 U.S. at 283. Although the Court offered general guidance, it did not elaborate about the particulars of this right. Courts and litigants continue to struggle with several issues here, including what constitutes price impact evidence and who bears the burden of persuasion at the rebuttal stage.

The Supreme Court recently addressed some of these issues in Goldman Sachs Grp., Inc. v. Ark. Teacher Ret. Sys., 594 U.S. ___, 141 S. Ct. 1951 (June 21, 2021) . In Goldman, the Court held that when defendants are attempting to rebut the Basic presumption of classwide reliance at class certification, the generic nature of alleged misrepresentations may be considered as evidence of the lack of price impact, even if doing so overlaps with the merits question of materiality. Goldman , 594 U.S. ___, at *7, 141 S. Ct. at *1960-1961. The Court further held that defendants seeking to rebut the Basic presumption bear not only the burden of production, but also the ultimate burden of persuasion to prove lack of price impact by a preponderance of the evidence. Goldman, 594 U.S. ___, at *10, 141 S. Ct. at *1962-1963.

For a more detailed discussion of these class-certification cases and other related considerations, see {Loss Causation in Securities Fraud Actions}, Materiality in Securities Fraud Actions, Reliance in Securities Fraud Actions, and U.S. Supreme Court Securities Litigation Decisions

Who Can Be Held Liable under the Exchange Act?

The Roberts Court has also clarified who can be held primarily liable under the Exchange Act for misrepresentations and omissions of material fact. In 2008, the justices addressed "scheme liability," in which secondary actors—such as an issuer's business suppliers or vendors—are accused of conspiring behind the scenes with the issuer to perpetrate a fraud on shareholders. At times, these claims will allege that the secondary actors engaged in the deceptive conduct proscribed by Rule 10b-5(a) and (c) but will not charge them with making false or misleading statements to the company's investors. In Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc., 552 U.S. 148, 159–60 (2008), the Court reaffirmed that private plaintiffs pursuing such a theory must plead and prove reliance. Otherwise, as Justice Anthony Kennedy noted, "the implied cause of action would reach the whole marketplace in which the issuing company does business." Stoneridge Inv. Partners, 552 U.S. at 160.

Janus

Later decisions have further clarified the scope of Section 10(b) by parsing the three subparts—(a), (b), and (c)—of Rule 10b-5. For instance, in Janus Capital Group, Inc. v. First Derivative Traders, 564 U.S. 135, 142 (2011), the Supreme Court held that a defendant must actually be the "maker" of an untrue statement in order to be held liable under Rule 10b-5(b), which forbids the dissemination of such false statements in connection with the purchase or sale of a security. Janus Capital Group, Inc., 564 U.S. at 142. A maker for these purposes is an individual who holds "ultimate authority over the statement, including its content and whether and how to communicate it." It does not, however, include a mere speechwriter, since the ultimate content of the speech—and whether to deliver it at all—is entirely within the speaker's control. Janus Capital Group, Inc., 564 U.S. at 143.

Lorenzo

Janus did not squarely address Rules 10b-5(a) and (c)—which, on their face, reach other forms of manipulative and deceptive conduct, beyond untrue statements and omissions. Rule 10b-5(a) prohibits the "employ[ment] [of] any device, scheme, or artifice to defraud," while Rule 10b-5(c) bans "engag[ing] in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." 17 C.F.R. § 240.10b-5. A more thorough explication of these provisions would have to wait until 2019, when the Court decided Lorenzo v. SEC, 139 S. Ct. 1094 (2019). In *Lorenzo*, the Court determined that an investment banker could be held liable under subparts (a) and (c) for sending false and misleading emails to potential investors "at the direction of his boss"—and not defendant Lorenzo—"who supplied the content and 'approved' the messages." Lorenzo, 139 S. Ct. at 1099. As the Court explained, "[t]hose who disseminate false statements with the intent to defraud [can be held] primarily liable under Rules 10b-5(a) and (c) . . . even if they are secondarily liable under Rule 10b-5(b)." Lorenzo, 139 S. Ct. at 1097–98.

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Jay Kasner, Skadden's securities litigation practice leader, represents a diverse group of U.S. and international public and private companies and their directors and officers in their most crucial litigation matters. Mr. Kasner has been ranked repeatedly in the top tier for nationwide securities litigation in Chambers USA — including most recently in its 2022 rankings — and has been described by clients as the "dean of the securities Bar," "king of the [securities] space" and a "presence in the courtroom." He also is one of a select group of lawyers listed by Chambers as a Star Individual for New York securities litigation, in addition to being a recipient of its Business Trial Lawyer Award for Excellence. Sources also have told the publication, "He's probably the best securities lawyer in the country."

In 2021, he also was recognized as a USA Litigation Thought Leader by Who's Who Legal and named to The Legal 500's Hall of Fame for Securities Litigation: Defense, in addition to being recognized as a National Practice Area Star by Benchmark Litigation 2022. He also has repeatedly been named to The Best Lawyers in America. Under Mr. Kasner's leadership, Skadden's 80-attorney securities litigation practice has consistently been ranked, including in the 2022 edition, in the Fearsome Foursome — the four elite litigation practices — and named a "powerhouse" in securities and finance litigation by BTI Consulting. The practice also was acknowledged in Lex Machina's 2022 Securities Litigation Report as having served as defense counsel in more federal securities cases in the U.S. from 2019 to 2021 than any other law firm. Additionally, in 2021, Skadden was named a Litigation Department of the Year finalist by The American Lawyer. Mr. Kasner also has been named a Distinguished Leader by the New York Law Journal — which also has repeatedly named Skadden as its Litigation Department of the Year, including in 2021 — and a Litigation Trailblazer by the National Law Journal.

William J. O'Brien, Counsel, Skadden, Arps, Slate, Meagher & Flom LLP

Mr. O'Brien has participated in commercial arbitrations before the AAA and regulatory proceedings before the SEC and FINRA.

Mr. O'Brien has represented clients, both as plaintiffs and defendants, in actions involving a variety of federal and state statutes, including the Securities Exchange Act of 1934, the Securities Act of 1933, the Racketeering Influenced and Corrupt Organizations Act (RICO), the Delaware General Corporation Law and New York's Business Corporation Law. He also has litigated a wide range of common law claims, including alleged breaches of contract, breaches of fiduciary duties, fraud, negligence and tortious interference.

Robert A. Fumerton Partner, Skadden, Arps, Slate, Meagher & Flom LLP

On behalf of UBS, Mr. Fumerton was a lead trial lawyer in the first-ever residential mortgage-backed securities action brought by a trustee to go to trial. In the unprecedented trial in the U.S. District Court for the Southern District of New York, where the trustee was seeking more than $2 billion in damages, Mr. Fumerton delivered the closing argument and conducted the majority of the examinations, including the cross-examination of the plaintiff's central expert, which received extensive media attention.

Mr. Fumerton also was a lead trial lawyer for the Canadian Imperial Bank of Commerce in a hotly contested litigation against Cerberus Capital Management, where Cerberus has sought more than $1 billion in damages and CIBC has asserted counterclaims worth in excess of $600 million. In a three-week trial in the Commercial Division of the New York Supreme Court, he conducted all of the cross-examinations on behalf of CIBC.

In another case of first impression, Mr. Fumerton represented the underwriters of two multibillion-dollar global note offerings for Petrobras, the largest government-owned oil company in Brazil, in an action alleging securities violations based on the highly-publicized corruption and bribery allegations surrounding the Brazilian government.

Mr. Fumerton was lead counsel for Yahoo! in the Southern District of New York and Second Circuit proceedings against Microsoft seeking to vacate an emergency arbitration award granted to Microsoft concerning a strategic alliance between the parties under which Yahoo would migrate its search advertising services to Microsoft's "Bing Ads" platform in various markets worldwide.

On behalf of First NBC Bank Holding Company, Mr. Fumerton secured a dismissal from the bench of a securities class action complaint in which investors alleged that First NBC had engaged in fraud stemming from its massive restatement of financials. The restatement was attributable to First NBC's need to correct accounting for its investment in tax credit entities, a significant part of its portfolio arising from the rebuilding of New Orleans post-Katrina.

Mr. Fumerton represented UBS and Société Générale in the landmark litigation filed by the Federal Housing Finance Authority, as conservator of Fannie Mae and Freddie Mac, arising out of the purchase of nearly $200 billion of residential mortgage-backed securities.

Mr. Fumerton has represented several Asia-based issuers, including Didi Global Inc., Nio, Inc., Baidu, Sea Ltd., iQIYI, Weibo, Pinduoduo, JA Solar, Jianpu Technology, Tal Education, Pintec, Yunji, FinVolution Group, Jumei International Holding Ltd., AirMediaGroup, Inc. and iDreamSky, in class action suits alleging that the companies made false or misleading statements to shareholders.

In a highly publicized litigation brought by billionaire William Koch over the authenticity of wine that purportedly once belonged to Thomas Jefferson, Mr. Fumerton won a complete dismissal of RICO, conspiracy and fraud claims for Christie's, Inc. The subject of the litigation was chronicled in The New York Times best-seller, "The Billionaire's Vinegar."

Mr. Fumerton obtained a series of victories for toymaker JAKKS Pacific, Inc. against World Wrestling Entertainment, Inc., including the complete dismissal of all of WWE's claims, in a hotly contested federal and state court litigation, in which WWE accused JAKKS of a massive and complex RICO and bid-rigging conspiracy in procuring a video game license that has generated more than $1.4 billion in net sales, as well as several lucrative toy licenses.

After a full evidentiary trial before the American Arbitration Association, Mr. Fumerton won a complete victory on behalf of SanDisk in arbitration against Samsung Electronics. The dispute, which has garnered significant media attention, related to the delivery of critical electronic components and patent licenses.

Mr. Fumerton played a role in the prepackaged Chapter 11 reorganization plan for Central European Distribution Corporation, a producer and distributor of alcoholic beverages, which was named as the Chapter 11 Reorganization of the Year (Over $1 Billion) at the M&A Advisor Turnaround Awards.

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