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Supremes: Class Actions and Arbitration Do Not Mix

by Michael J. Buchman

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In a recent issue we reported on the oral argument in the Supreme Court of the *AT&T Mobility* case, involving the right to bring class actions in arbitration. AT&T Mobility imposed on all of their cell phone customers a standard form contract containing a requirement that all disputes be submitted to arbitration, and prohibiting class actions. The lower courts had held that the "no class action" provision was unenforceable because prosecution of individual claims would be financially impracticable, and enforcement of the no class action provision would therefore choke off any possibility that the consumer could get relief. Individual claims in this particular case, for example, would be in the area of $30 per plaintiff. No one would bring an individual claim for such a small amount.

We concluded at the time of the oral argument that the Court seemed to be siding with the plaintiffs, because it was reluctant to second-guess California state law. Boy, were we wrong. The Court has now ruled, 5-4, that the Federal Arbitration Act ("FAA") trumps state law of unconscionability, and that the "no class action" provision is enforceable. In our opinion, that decision is a travesty and will go a long way towards extinguishing consumer and other class action rights.

The alleged wrongdoing was simple enough: plaintiffs (the Concepcions) had purchased AT&T cell phone service, which AT&T advertised would include "free phones." The phones, however, were not free – the Concepcions were charged $30.22 in sales tax based upon the phones' retail value. The plaintiffs commenced a class action in federal court alleging that AT&T was guilty of fraud and false advertising. AT&T moved to compel arbitration.

The FAA was designed to encourage enforcement of contractual arbitration provisions, but it has a "savings clause" that bars arbitration if grounds exist for revocation of the contract, such as fraud, duress, or "unconscionability." California law will not enforce unconscionable (grossly unfair, one-sided) contracts or contract provisions, including provisions that choke off all effective forms of redress, such as "no class action" provisions. The lower courts and the Ninth Circuit found the no class action provisions unconscionable under California law.

The Supreme Court concluded that the FAA overrides California law because requiring that class actions be available in arbitrations would frustrate the purposes of the FAA:

> The overarching purpose of the FAA . . . is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings. Requiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA.

These "fundamental attributes of arbitration," according to the Supreme Court, are "informality," which means speedy and cheap. Class actions, on the other hand, require "procedural formality," such as the application of cumbersome rules for class certification, which are neither speedy nor cheap because they have to comply with due process for class members.

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Most revealing, however, is the majority's reliance on "increasing the risk to defendants": "when damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once, the risk of an error will often become unacceptable," because it is more difficult to appeal.

None of these "fundamental aspects" of arbitration identified by the majority, while true in many cases, are enshrined anywhere in the Arbitration Act. To hold that any deviation from "cheap, speedy, informal" procedures is fundamentally inconsistent with the entire scheme of the Act is a figment of the majority's imagination. The majority apparently viewed arbitration procedure primarily as a way to make it easy for corporations to get rid of pesky consumer complaints, without fear of a substantial judgment that would be difficult to overturn. We would note, however, that there have recently been huge arbitration awards in cases that were not class actions.

To bolster its position, the majority noted that "the times in which consumer contracts were anything other than adhesive are long past." It cites no authority for this position, which is belied by the facts of the case. No consumer would voluntarily agree to surrender all right to redress for any wrongdoing by the company; yet that is exactly what a "no class action" provision amounted to here.

The reality is that class-wide arbitration is necessary to prosecute small claims that might otherwise fall by the wayside because they cannot be cost effectively pursued on an individual basis. While weighing the pros and cons of the case, the majority never shows the slightest concern that, in its pursuit of the ideal cheap and speedy process, it is actually making any process for consumers impossible.

In a virtually identical case, the Second Circuit, in *In re American Express*, recently found a mandatory arbitration and class action waiver unenforceable "because enforcement of the clause would effectively preclude any action seeking to vindicate the statutory rights asserted by Plaintiffs." The focus of the Second Circuit's analysis was on the fiscal impracticability of pursuing small individual claims. Indeed, in *American Express* the defendant conceded that individual claims cannot be cost-effectively pursued where litigation expenses far exceed the recovery for one claimant. That is a point Justice Breyer echoed in his dissent in *AT&T Mobility,* when he noted that class actions for small claims would go unremedied as no "rational lawyer would have signed on to represent the Concepcions in litigation for the possibility of fees stemming from a $30.22 claim."

The dissent in *AT&T Mobility* and the majority in *American Express* recognized that enforcing the arbitration and no class action waivers would essentially grant corporations de facto immunity from liability for their own misconduct. The class action mechanism was designed specifically "to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action . . . "

The Supreme Court may soon face these arguments again. How it will address the conflict of its *Concepcion* decision with antitrust law and Fed. R. Civ. P. 23 will be interesting. It will also be interesting to see if it addresses the economic reality that individually arbitrating disputes can be cost prohibitive, thereby making the class action device the only economically feasible means for enforcing statutory rights. Depriving claimants of their federal statutory rights and preventing the use of the class device under Fed. R. Civ. P. 23 cannot be what Congress intended concerning claims too small to prosecute on an individual basis. But for now, that is the contrived conclusion reached by the US Supreme Court.

Struggles Over Executive Pay Continue

As corporate proxy season comes to a head, there is increasing information that shows how much executive pay climbed last year, as shareholders start weighing in on this year's compensation plans under new "say on pay" rules.

New Say on Pay Votes Generate Pressure

Early this year, the SEC implemented Section 951 of the Dodd-Frank Act by adopting final rules concerning shareholder advisory votes on executive compensation. Most significantly, the Dodd-Frank Act requires publicly-traded companies with public floats of $75 million or more to provide their shareholders advisory votes on the compensation of company executives, beginning with a company's first annual meeting held after January 20, 2011.

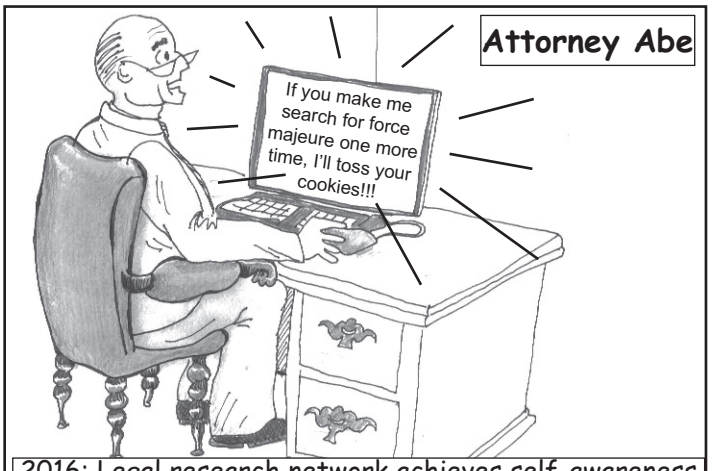
The *WSJ* reports that the law is making at least some companies think twice about their high-flying compensation policies. Institutional Shareholder Services, the proxy advisory firm, has recommended "no" votes on executive pay at 186 companies, about 13% of the proposals it has reviewed. As of early May, 12 companies had already lost say on pay votes this year, including **Hewlett-Packard, Stanley Black & Decker, Beazer Homes** and **Janus Capital Group.** The vote at Stanley Black & Decker followed a year when the CEO's pay had risen 253 percent, to $32.57 million.

Other companies were forced to make significant concessions

to avoid negative ISS recommendations and a possible negative shareholder vote. ISS initially criticized **Alcoa** for boosting its CEO's compensation by 21% last year "despite the company's lagging shareholder returns," and for linking equity awards to just one year of performance. Alcoa wrote a letter to investors trying to justify its executive compensation plans and called a number of its large shareholders to press them for support. When that didn't do the trick, it finally agreed to tie 2011 stock awards to three years' of performance rather than just one, and ISS dropped its objections.

GE and **Lockheed Martin** secured support for their executive pay plans only after attaching additional requirements to stock-option grants already awarded to their chief executives. For example, GE put performance hurdles on two million stock options awarded to Chief Executive Jeff Immelt after learning that a number of big time shareholders, including Blackrock, which owns about 5% of GE's stock, intended to vote no on the company's executive pay plans. Under the original terms of his options grant, Immelt simply had to stay at the company until 2013 to get half the stock options and until 2015 to get the other half. Now, he can't exercise any of the options until 2015, and then only if the company meets specified performance targets. For Immelt to get half the options, GE has to improve its cash flow, and for him to get the other half, the stock has to outperform the market.

At **Disney**, days before the shareholder meeting, the company dropped "gross-up" provisions from employment agreements for chief Robert A. Iger and three fellow executives. Under the provisions, the company would have paid the taxes on payments due the executives in the event they lost their jobs in the wake of an acquisition. The removal of the gross up provisions was extraordinary in that it rescinded terms in contracts that were still valid.



2016: Legal research network achieves self-awareness and starts talking trash . . .

Companies that don't back down when ISS objects often have to lobby shareholders to approve compensation packages. For example, **Pfizer** and **Johnson & Johnson** squeaked through their "say on pay" votes after lobbying many institutional shareholders to ignore criticism of their compensation decisions.

What if the Company Ignores a Negative Vote?

So what happens if a company actually loses the say on pay vote but goes ahead anyway with the pay packages shareholders rejected? Sometimes shareholders sue the Board, the Compensation Committee, and even the compensation consultants of those companies.

For example, **Jacobs Engineering** lost its say on pay vote on January 28, by a margin of 54% to 45%. A week later a shareholder filed a derivative action against the company's management alleging "excessive and unwarranted 2010 executive compensation" in the face of "abysmal" dropping revenues and net income. The complaint prominently cited the results of the "say on pay" vote.

Six weeks after **Beazer Homes** lost its say on pay vote on February 2 (also by a 54 to 46 margin), a shareholder brought a derivative action alleging that raises for executives "violated the company's pay-for-performance policy and favored Beazer's CEO and top executives at the expense of the corporation."

Occidental Petroleum (and its compensation consultant) was sued last year after it lost a pre-Dodd-Frank say on pay vote. Last year its CEO, Ray Irani, took home $76 million, up 142 percent from the previous one, including a $33 million cash bonus and $40.3 million in stock awards.

A Rising Tide Lifts All Senior Executives.

These struggles follow the dramatic increases in executive pay of 2010. The AFL-CIO recently released a study showing that CEOs at 299 U.S. companies collectively earned $3.4 billion in 2010, 23 percent higher than the previous year. Nearly 190 of those chief executives got a pay raise from their 2009 levels. According to another study, commissioned by *The New York Times*, the median pay for top executives at 200 major companies was $9.6 million last year, a 12 percent increase over 2009. Another study, this one for the *Wall Street Journal*, concluded that pay had risen only about 11 percent.

Among those CEOs highlighted in the AFL-CIO's report were **Viacom** CEO Philippe Dauman (the highest-paid CEO, with salary, stock and other benefits totaling $84.5 million during just nine months of 2010), **Occidental Petroleum** CEO Ray

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Irani (more than $76 million) and Abercrombie and Fitch CEO Michael Jeffries (more than $36 million). *The New York Times* study highlighted the pay of Larry Ellison of Oracle, the software giant, who received $70.1 million -- though that is down 17 percent from 2009.

These pay increases reflect the rising fortunes of big business enterprises. In the fourth quarter, profits at U.S. businesses were up 29.2 percent, the fastest growth in more than 60 years. Collectively, American corporations logged profits at an annual rate of $1.678 trillion. As profits have risen, so have stock prices and the value of equity awards.

And Then There's Wal-Mart.

Most companies have been trying to link executive pay to company performance, and when companies do particularly well it is not surprising that senior management will do well, too.

But there are many ways to determine performance, and Wal-Mart's recent maneuvering shows how not to do it. As highlighted in a recent article in *The New York Times*, for years Wal-Mart had been using much the same mix of performance metrics to decide how much to give out in management incentive compensation; and one of the most heavily weighted factors has been same-store sales. Wal-Mart's 2008 proxy statement explained that the company used "comparable-store sales as a performance metric because it believes it is a key driver of shareholder returns, and because investors look to comparable-store sales as an important measure of performance in the retail industry." According to the *Times*, Wal-Mart CEO Mike Duke has said that "same-store sales accounted for 30 percent of the weighted factors determining his performance pay in fiscal 2010."

For the last two years, however, Wal-Mart's same store sales have been declining steadily. Duke recently said that his "top priority" this year "was to increase same store sales." Management's failure to stop the bleeding can hardly be considered a success. Last year, for example, it led to a decrease in overall incentive compensation for executives.

But Wal-Mart's proxy statement for the June 2011 annual meeting contained a surprise announcement: in calculating performance based compensation for 2011, the company is no longer considering same store sales, but is instead focusing on overall sales growth. As the Church Lady used to say, "how convenient": Wal-Mart is opening lots of new stores, making it easy to achieve overall sales growth.

The market has not reacted well to this disclosure. The head of one retailing consulting firm was quoted in the *Times* as describing Wal-Mart's move as a "failure to admit failure," recounting that "this is the first time since the company was founded that, during a recession, same-store sales were consistently negative in contrast to key competitors like Costco, Target, TJX and BJ's."

Adding insult to injury, at the same time that Wal-Mart went out of its way to reward failing management, it took a meat-axe to compensation for rank and file employees. During the holiday season at the end of last year, the company terminated its longtime profit sharing programs for its non-executive workers. As the retail consultant memorably characterized this move:

> Taking away profit-sharing was the ultimate Ebenezer Scrooge story of the last holiday season. . . Ebenezer makes all the money, and all the poor Cratchits working in the Wal-Mart stores become poorer and poorer.

Lucrative pay packages for executives who produce inferior financial results are indefensible, particularly at companies where rank and file workers are being treated shabbily.

H. Adam Prussin and Shaheen Rushd

Pomerantz Goes After BofA Directors Who Snoozed While BofA Lost

Recent issues of the *Monitor* discussed the role played by the Mortgage Electronic Registration System ("MERS") in gumming up the real estate marketplace. Pomerantz is now leading the fight to hold bank directors accountable for letting this mess happen on their watch. As a result of these failures, not only are many huge banks having enormous difficulty enforcing their mortgages, but they are being subjected to massive potential fines, penalties, and litigation liabilities for abusing consumers.

Pomerantz recently filed two derivative lawsuits, one on behalf of an institutional investor and the other on behalf of an individual, alleging that the directors of Bank of America Corporation ("BofA") breached their fiduciary duties by allowing the bank's mortgage modification and foreclosure programs to be grossly mismanaged. The need for careful oversight of these operations became obvious, at the latest, when BofA acquired mortgage originator Countrywide Financial Corporation in July of 2008. This was not a normal acquisition; it was pushed through by the Federal Reserve in response to the impending collapse of the financial system, to keep Countrywide from going under. Countrywide, whose name will no doubt live in infamy, had $54 billion of impaired residential

loans when BofA acquired it. It should have been obvious that an avalanche of foreclosures, loan modification requests and related bankruptcies was inevitable.

Yet, the complaints allege, BofA's loan modification and foreclosure operations were understaffed and undertrained, and were engaging in widespread unethical and illegal conduct.

The directors turned a blind eye to the problems. They failed to put in place procedures for documenting the transfer of mortgages and mortgage notes that had been sold and securitized, which seriously jeopardizes BofA's ability to foreclose on mortgages that were in default.

They failed to make sure that systems were in place to assure that foreclosure paperwork was in order, including legally enforceable assignments, affidavits, and related documents. Those documents must be based on actual review and verification of the underlying mortgages, notes and correlating loan and payment data; but instead, BofA's employees and agents were allowed to engage in so-called "robo-signing" of unverified, defective documentation. Such documents are a legal prerequisite to foreclosure, and because of these deficiencies, courts have dismissed foreclosure proceedings, in some cases with prejudice.

They also failed to make sure that systems were in place to assure that employees did not engage in widespread consumer abuses. According to investigations conducted by various state attorneys general, BofA personnel often made misrepresentations to distressed mortgagors, conduct that the AGs describe as "truly egregious" and in violation of previously entered consent judgments.

At one point in the fall of 2010, BofA was forced to halt all 100,000-plus foreclosure proceedings so that it could review the accuracy of the documentation it had submitted. BofA faces significant fines and penalties on the state and federal level, increased regulatory oversight, and civil lawsuits from a panoply of private litigants, ranging from aggrieved homeowners alleging illegal foreclosures of their homes to mortgage-backed securities investors suing to force BofA to buy back billions of dollars of securitized, non-performing residential loans. The damage to BofA's reputation has been enormous and may be irreversible.

Pomerantz is suing the BofA board for damages as well as injunctive relief. We are also investigating other large financial institutions for similar residential loan modification and foreclosure abuses.

Matthew L. Tuccillo

Institutions Want a Say on Corporate Political Expenditures

A few months ago, Home Depot applied to the SEC for permission to exclude from its proxy statement a resolution proposed by shareholder NorthStar Asset Management. The proposal would require that the company disclose its policies on political contributions, and report on its political spending for the previous year and its anticipated political spending for the next. In addition, NorthStar's proposal would require that the proxy statement analyze whether the spending is consistent with the company's values and whether it poses risks to the company's brand, reputation, or shareholder value. These plans would be blocked unless 75% of the shareholders voted to approve them. Similar proposals are now scheduled for a vote at Citigroup, I.B.M., Charles Schwab, Prudential, JPMorgan Chase and other corporations.

Home Depot told the SEC that NorthStar's resolution would interfere with the company's ordinary business operations and was therefore improper. The SEC ruled in favor of NorthStar, affirming that resolutions which present a "significant social policy issue" are not excludable even if they may otherwise intrude on ordinary business.

These events come in the wake of last year's Supreme Court's decision in *Citizens United*, which held that corporations have First Amendment rights to spend unlimited amounts of money on political advertisements and other independent political activities. In response to that ruling, Congress has tried, but so far failed, to pass legislation that would require that political ads disclose the identities of those who paid for them. The ruling threatens to give big money even greater influence on elections. That is why shareholders are increasingly pressing to assert some control over corporate political expenditures.

In an Op-Ed piece published in *The New York Times*, John Bogle, former Vanguard chief executive, applauded NorthStar's resolution, concluding that "America's institutional investors must stand up to the Supreme Court's misguided decision and bring democracy to corporate governance…and take that first step along the road to reducing the dominant role that big money plays in our political system."

Pomerantz in Paris

The Pomerantz firm hosted a breakfast conference in Paris on April 5, 2011. Pomerantz partners Marc Gross, Murielle Steven Walsh and Jeremy Lieberman represented the Firm at this event.

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Senior managing partner Marc Gross spoke on issues of interest to foreign investors, including the benefits of securities class actions, the various roles an investor can play in such cases, and in particular, the importance of institutional investors' participation in securities class action settlements.

The conference also featured distinguished panelists Jean-François Poulnais, in house counsel at AMUNDI; Anne-Marie Jourdan, counsel at the largest pension fund in France, and Stéphanie Saint-Pé of AFG, an association of institutional investors. AFG has previously issued a position paper stressing the importance of French institutional investors recouping class action settlement monies.

notable dates

. . . on the Pomerantz horizon

May 21-26: **Cheryl Hamer** and **Jason Cowart** will attend the National Conference on Public Employees Retirement Systems (NCPERS) Annual Conference in Miami, FL.

June 1-2: **Leigh Handelman Smollar** will speak on "Carrying Out Fiduciary Responsibilities in Management and Investments" at the Illinois Public Employees' Retirement System Summit in Chicago, IL. **Cheryl Hamer** and **Patrick Dahlstrom** will attend the Summit.

June 9-10: **Jeremy Lieberman** will participate in a panel discussion on "Pre-Litigation Conflict Resolution Strategies" at the American Conference Institute's National Summit on the Future of Fiduciary Responsibility in New York, NY. **Cheryl Hamer** and **Murielle Steven Walsh** will attend the conference.

June 13-15: **Cheryl Hamer** and **Jason Cowart** will attend the Trustees and Administrators Conference at the International Foundation of Employee Benefit Plans (IFEBP) conference in Las Vegas, NV.

June 17: **Marc Gross** will participate in a panel discussion at the American Constitution Society National Convention in Washington, DC, on "Dodd-Frank and the Future of Securities Litigation."

June 21-24: **Cheryl Hamer** will attend the National Association of Public Pension Attorneys (NAPPA) Conference in Seattle, Washington.

July 21: **Jason Cowart** will speak on Class Actions at the Practicing Law Institute in New York.

July 25-26: **Cheryl Hamer** and **Murielle Steven Walsh** will attend the International Foundation of Employee Benefit Plans (IFEBP) Canadian Public Sector Pension and Benefits Conference in Newfoundland.

August 5-11: **Cheryl Hamer** will attend the National Association of State Retirement Administrators (NASRSA) Annual Conference in Lake Geneva, Wisconsin.

August 28-31: **Cheryl Hamer** will attend the National Association of State Treasurers (NAST) Annual Conference in Bismarck, ND.

We hope to see you there!

Cheryl D. Hamer

Marc I. Gross

Jeremy A. Lieberman

Jason S. Cowart

Leigh Handelman Smollar

PomTrack© Class Actions Update

Pomerantz, through its proprietary PomTrack© system, monitors client portfolios to identify potential claims for securities fraud, and to identify and evaluate clients' potential participation in class action settlements.

NEW CASES:

A selection of recently filed securities class action cases filed by various law firms are listed below. If you believe your fund is affected by any of these cases, contact Pomerantz for a consultation.

Case Name	Ticker	Class Period	Lead Plaintiff Deadline
Finisar Corporation	FNSR	December 1, 2010 - March 8, 2011	May 16, 2011
Medifast, Inc.	MED	March 4, 2010 - March 10, 2011	May 17, 2011
ShengdaTech, Inc.	SDTH	March 15, 2010 - March 15, 2011	May 17, 2011
United Western Bancorp, Inc.	UWBK	related to September 2009 offering	May 17, 2011
Vestas Wind Systems A/S (D. Colo.)and (D. Or.)	VWDRY, VWS	October 27, 2009 - October 25, 2010	May 17, 2011
Kid Brands, Inc.	KID	March 26, 2010 - March 15, 2011	May 23, 2011
Rosetta Stone, Inc.	RST	February 25, 2010 - March 1, 2011	May 23, 2011
China Integrated Energy, Inc.	CBEH	March 31, 2010 - April 20, 2011	May 24, 2011
Stillwater Funds (Gerova Financial Group, Ltd.) (E.D.N.Y.)	GFC	December 23, 2009 - January 20, 2010	May 24, 2011
Pride International, Inc. (S.D. Tex.)	PDE	On behalf of all public shareholders	May 27, 2011
Advanced Battery Technologies, Inc.	ABAT	November 24, 2008 - March 30, 2011	May 31, 2011
China Century Dragon Media, Inc.	CDM	February 8, 2011 - March 25, 2011	May 31, 2011
China Electric Motor, Inc.	CELM	January 29, 2010 - March 30, 2011	May 31, 2011
China Intelligent Lighting and Electronics, Inc. (C.D. Cal.)	CIL	June 18, 2010 - March 29, 2011	May 31, 2011
Cisco Systems, Inc. (2011)	CSCO	February 3, 2010 - February 9, 2011	May 31, 2011
NIVS IntelliMedia Technology Group, Inc. (C.D. Cal.)	NIV	March 24, 2010 - March 25, 2011	May 31, 2011
NIVS IntelliMedia Technology Group, Inc. (S.D.N.Y.)	NIV	March 24, 2010 - March 25, 2011	May 31, 2011
Urban Outfitters, Inc.	URBN	November 15, 2010 - March 7, 2011	May 31, 2011
Wilshire Bancorp, Inc.	WIBC	March 15, 2010 - March 16, 2011	May 31, 2011
American Superconductor Corporation	AMSC	July 29, 2010 - April 5, 2011	June 6, 2011
Office Depot, Inc. (2011)	ODP	July 27, 2010 - March 31, 2011	June 6, 2011
Puda Coal, Inc. (S.D.N.Y.)	PUDA	September 15, 2009 - April 11, 2011	June 13, 2011
Subaye, Inc.	SBAY	December 29, 2009 - April 7, 2011	June 14, 2011
Universal Travel Group, Inc. (C.D. Cal.)	UTA	January 19, 2010 - April 12, 2011	June 15, 2011
Universal Travel Group, Inc. (D. N.J.)	UTA	January 19, 2010 - April 12, 2011	June 15, 2011
1st Centennial Bancorp	FCEN	April 13, 2006 - January 23, 2009	June 20, 2011
SkyPeople Fruit Juice, Inc	SPU	March 31, 2010 - April 1, 2010	June 20, 2011
Acxiom Corp. (2011)	ACXM	October 27, 2010 - March 30, 2011	June 24, 2011
ZST Digital Networks, Inc.	ZSTN	October 20, 2009 - April 21, 2011	June 24, 2011
HQ Sustainable Maritime Industries, Inc.	HQS	May 11, 2009 - April 1, 2011	June 27, 2011
Deer Consumer Products, Inc.	DEER	March 31, 2009 - March 21, 2011	June 28, 2011
Epicor Software Corporation (2011) (C.D. Cal.)	EPIC	On behalf of all public shareholders	June 28, 2011
Gulf Resources, Inc.	GFRE	March 16, 2009 - April 26, 2011	June 29, 2011
Fushi Copperweld, Inc. (2011)	FSIN	August 14, 2007 - March 29, 2011	July 5, 2011
GEROVA Financial Group, Ltd.	GFC	January 8, 2010 - February 23, 2011	July 5, 2011
Sino Clean Energy, Inc.	SCEI	April 6, 2009 - May 5, 2011	July 5, 2011
Community Health Systems, Inc.	CYH	July 27, 2006 - April 11, 2011	July 8, 2011
MLP AG (Germany)	MLP	January 1, 1999 - December 31, 2002	December 31, 2012

SETTLEMENTS:

The following class action settlements were recently announced. If you purchased securities during the listed class period, you may be eligible to participate in the recovery.

Case Name	Amount	Class Period	Claim Filing Deadline
China Shenghuo Pharmaceutical Holdings, Inc.	$800,000	August 16, 2007 - August 19, 2008	May 17, 2011
Household International, Inc. (N.D. Ill.)	$1,500,000	October 23, 1997 - October 11, 2002	May 24, 2011
Xybernaut Corporation (Securities Remission)	$4,500,000	N/A - May 13, 2005	May 31, 2011
WellCare Health Plans, Inc.	$200,000,000	February 14, 2005 - October 24, 2007	June 4, 2011
Noah Education Holdings, Ltd.	$1,750,000	October 18, 2007 - November 19, 2007	June 6, 2011
Chicago Board of Trade (June 2005 Ten Year Treasury Note Futures Contracts)	$118,750,000	May 9, 2005 - June 30, 2005	June 7, 2011
JA Solar Holdings Co. Ltd.	$4,500,000	August 12, 2008 - November 12, 2008	June 7, 2011
Navistar International Corp. (2007)	$13,000,000	February 14, 2003 - July 17, 2006	June 14, 2011
Signalife, Inc.	$4,000,000	February 10, 2004 - April 14, 2008	June 20, 2011
Intermix Media, Inc. (2006)	$45,000,000	July 18, 2005 - September 30, 2005	June 22, 2011
AuthentiDate Holding Corp.	$1,900,000	July 16, 2004 - May 27, 2005	July 1, 2011
Value Line Funds (SEC)	$43,705,765	January 1, 1986 - November 9, 2004	July 18, 2011
First Trust Portfolios L.P.	$5,150,000	July 26, 2005 - July 7, 2008	July 20, 2011
Nuvelo, Inc.	$8,916,667	January 5, 2006 - December 8, 2006	July 22, 2011
Panera Bread Co.	$5,750,000	November 1, 2005 - July 26, 2007	July 22, 2011
Semtech Corp.	$20,000,000	August 27, 2002 - July 19, 2006	July 24, 2011
Credit Suisse Group	$70,000,000	February 15, 2007 - April 14, 2008	August 1, 2011
Addus HomeCare Corp.	$3,000,000	October 27, 2009 - March 18, 2010	August 17, 2011
Bernard L. Madoff Investment Securities LLC (2008) (S.D.N.Y.) (Tremont Funds/Rye Funds)	$100,000,000	May 10, 1994 - December 11, 2008	August 31. 2011
DVI, Inc.	$4,000,000	August 10, 1999 - August 13, 2003	August 31, 2011
Tellabs, Inc.	$7,375,000	December 11, 2000 - June 19, 2001	September 2, 2011

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The Law Firm Institutional Investors Trust
for Securities Monitoring and Litigation

Pomerantz is acknowledged as one of the premier firms in the areas of corporate, securities, mergers and acquisitions, antitrust, and insurance litigation. Founded by the late Abraham L. Pomerantz, known as the 'dean of the class action bar,' the firm pioneered the field of securities class actions. Today, 75 years later, Pomerantz continues in 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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