



News Release

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For more information, contact:

Tim Kolly 312-698-6220 | tkolly@dri.org

Supreme Court Decision in *Halliburton Co. v. Erica P. John Fund, Inc.*, Aligns with DRI Brief

CHICAGO – (June 23, 2014)—The Supreme Court [today issued its opinion](#) in *Halliburton Co. v. Erica P. John Fund, Inc.* The decision, one of a number of important class action cases that the Court has decided in the last year, was in alignment with an amicus brief filed by DRI’s Center for Law and Public Policy.

In the case at hand, Halliburton allegedly made misrepresentations concerning its accounting practices, the projected efficiencies of a merger, and its projected asbestos liability. Plaintiffs claim that Halliburton's stock dropped in price when the truth regarding these alleged misrepresentations was revealed. Plaintiffs sued as a putative class in 2002. The Northern District of Texas denied class certification because the plaintiffs failed to prove loss causation by a preponderance of the evidence. The Fifth Circuit affirmed.

The Supreme Court vacated the Fifth Circuit's decision and remanded, ordering the lower courts to address the question of whether a defendant may rebut the presumption of reliance, and thereby defeat class certification, by showing the alleged misrepresentations did not affect the market price. On remand, the district court certified the class, holding that Halliburton was not entitled to introduce price-impact evidence at the class certification stage. The Fifth Circuit affirmed.

The Supreme Court vacated the Fifth Circuit’s judgment that affirmed class certification and remanded the case “for further proceedings consistent with this opinion.” Although the Court declined to overrule *Basic, Inc. v. Levinson*, it has given defendants in securities-fraud class actions an additional argument against class certification. Chief Justice Roberts wrote the majority opinion, in which Justices Kennedy, Ginsburg, Breyer, Sotomayor, and Kagan joined. The Court held that defendants can seek to rebut the presumption of reliance at the class-certification stage by introducing evidence that the alleged misrepresentation did not affect the stock price. Chief Justice Roberts observed that price impact can be addressed at the class certification stage because it “has everything to do with the issue of predominance at the class certification stage.”

“The essence of the opinion is common sense,” said Richard B. Phillips, a DRI amicus brief co-author. “The presumption is founded on the idea that the market price reflects the alleged misrepresentation. Courts should not be required to turn a blind eye at the class certification stage to evidence that undermines that foundation. This decision gives defendants a new tool to try to avoid the costs and settlement pressure that come with class certification.”

Justice Ginsburg (joined by Justices Breyer and Sotomayor) wrote a short concurrence to address the possible impact of the decision on plaintiffs. She notes that although consideration of price impact could broaden the scope of discovery available at the class certification stage, it should not impose a “heavy toll” on plaintiffs because the burden will be on defendants to show a lack of price impact. Justice Thomas (joined by Justices Scalia and Alito) concurred in the judgment only and issued a concurring opinion arguing that *Basic* should be overruled.

DRI’s brief was authored by Richard B. Phillips, Jr. and Michael W. Stockham of Thompson & Knight LLP in Dallas. They are available for interview or for expert comment through DRI’s Communications Office.

For the full text of the amicus brief, click [here](#).

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