

## Supreme Court Holds Generic Nature of Statements Must Be Considered With Class Certification

Alert

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On June 21, 2021, the Supreme Court issued its decision in *Goldman Sachs Group, Inc., et al. v. Arkansas Teacher Retirement System, et al.* The case analyzes what the defendants considered were generic statements that did not have a price impact. The case is important because it addresses when a securities fraud case can be certified as a class action. Once class certification is granted, the settlement value of a case increases.

Here, the plaintiffs sought to certify a class of Goldman shareholders by invoking the presumption endorsed by the Supreme Court in *Basic Inc. v. Levinson*. The *Basic* presumption is premised on the theory that investors rely on the market price of a company's security, which in an efficient market incorporates all of the company's public misrepresentations.

Satisfying the prerequisites for invoking the *Basic* presumption, however, does not guarantee class certification. Defendants may rebut the *Basic* presumption at class certification by showing that an alleged misrepresentation did not actually affect the market price of the stock. If a misrepresentation had no price impact, then *Basic*'s fundamental premise "completely collapses, rendering class certification inappropriate."

On appeal, Goldman argued the Second Circuit erred twice:

- First, by holding that the generic nature of its alleged misrepresentations is irrelevant to the price impact inquiry at the class certification stage.
- Second, by assigning Goldman the burden of persuasion to prove a lack of price impact.

The Supreme Court noted as to the first question—whether the generic nature of a misrepresentation is relevant to price impact—the parties' dispute had largely evaporated. Plaintiffs conceded that the generic nature of an alleged misrepresentation often will be important evidence of price impact because, as a rule

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of thumb, a more general statement will affect a security's price less than a more specific statement on the same question.

The Supreme Court concurred in the parties' view. The Supreme Court stated that in assessing price impact at class certification, courts "should be open to all probative evidence on that question—qualitative as well as quantitative—aided by a good dose of common sense." The Supreme Court noted the generic nature of a misrepresentation often will be important evidence of a lack of price impact.

On the second question before the Supreme Court, Goldman argued that the Second Circuit erred by requiring Goldman, rather than plaintiffs, to bear the burden of persuasion on price impact at class certification. The Supreme Court rejected Goldman's argument that the Federal Rules of Evidence placed the burden on plaintiffs, noting that the burden of persuasion under *Basic* was a settled question.

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