WILMER, CUTLER & PICKERING

Securities Law Developments NEWSLETTER

NOVEMBER 27, 2001

FIFTH CIRCUIT TAKES RELIANCE-BASED APPROACH TO STOCK PRICE RESPONSIVENESS, JOINS MAJORITY OF CIRCUITS ON PSLRA SCIENTER PLEADING STANDARDS

The United States Court of Appeals for the Fifth Circuit recently addressed an issue that is becoming increasingly prevalent under the antifraud provisions of the federal securities laws: whether the lack of a market price response to an alleged misrepresentation requires dismissal of a claim based on that misrepresentation. In *Nathenson v. Zonagen, Inc.*, 267 F.3d 400 (5th Cir. 2001), the court held that the presumption of reliance generated by the fraud on the market theory is rebutted, as a matter of law, when the alleged misrepresentation does not affect the market price of the security in question. In the same opinion, the court also joined the majority of federal appellate courts addressing the pleading provisions of the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C.A. § 78u-4 (West 1997 & Supp. 2001), in holding that (i) allegations of scienter may be based on recklessness, and (ii) "motive and opportunity" allegations are relevant to the scienter inquiry, but will only rarely be sufficient to show the "strong inference" of scienter required by the PSLRA.

Factual Background

Between October 1997 and January 1998, the stock price of Zonagen, Inc. ("Zonagen"), a NASDAQ-traded biopharmaceutical company, tumbled following an investment banker's adverse reports concerning two of the company's products, an erectile dysfunction drug called Vasomax and an adjuvant called Immunax. Subsequently, several Zonagen shareholders filed a class action lawsuit against the company, its president and CEO, and two of its directors in the United States District Court for the Southern District of Texas. Asserting claims under Section 10(b) of the Securities Exchange Act and Rule 10b-5, plaintiffs claimed that defendants made false statements concerning Vasomax's success in clinical trials, Zonagen's intellectual property rights in Vasomax's active ingredient, and Zonagen's discovery of Immunax. These misrepresentations allegedly inflated the market price of Zonagen stock, and plaintiffs sought to represent a class of purchasers who bought Zonagen shares at these artificially high prices.

One of the fraud claims was based on Vasomax's performance in "Phase II" clinical trials required by the Food and Drug Administration. In the months following the Phase II trials, Zonagen issued press releases describing the trials in positive terms and either expressly stating or clearly implying that they had yielded statistically significant results. Zonagen's stock price did not rise on this news; in fact, it declined as the announcements were made. That November, Zonagen filed a form S-3 with the SEC disclosing that, contrary to its earlier representations, the Phase II trials had *not* yielded statistically significant results. Zonagen's share price increased slightly in the following months.

On defendants' motion, the district court dismissed the complaint in its entirety. The district court concluded that Zonagen's stock price was unaffected by the alleged misrepresentations concerning the Phase II trials and that those misrepresentations were therefore immaterial as a matter of law. With respect to the remaining claims, the district court held that the purported misstatements were also not material, although for other reasons, and that the complaint failed to satisfy the stringent pleading standards for scienter adopted by the PSLRA. On appeal, the Fifth Circuit concluded that the district court properly dismissed all but one of plaintiffs' claims and remanded for further proceedings as to that claim.

Fraud on the Market Presumption Rebutted by Absence of Market Price Response

The *Nathenson* plaintiffs did not allege that they individually relied on any misstatements concerning the Phase II trials.[1] Instead, they based their claims on the presumption of reliance flowing from the fraud on the market theory approved by the Supreme Court in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988). Borrowing from the "efficient capital markets hypothesis" in economics, the fraud on the market theory rests on the assumption that an efficient securities market will digest all publicly available information about a security — including all material misrepresentations — and reflect that information in the security's market price. Because investors generally rely on the integrity of that price, their reliance for Rule 10b-5 purposes can be "rebuttably presumed with respect to publicly disseminated materially misleading statements concerning companies whose shares are traded on a well-developed, efficient market."[2]

Relying on the Third Circuit's decision in *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410 (3d Cir. 1997), the district court reasoned that the fraud on the market theory requires that the alleged misrepresentations or omissions affect the market price of the security and tied this requirement to the materiality element of the Rule 10b-5 cause of action.[3] The Fifth Circuit agreed that an effect on market price is required, but held that "it is more appropriate…to relate this requirement to reliance rather than to materiality."[4] According to the court, both *Basic* and its own decision in *Abell v. Potomac Ins. Co.*,[5] approached the issue of market responsiveness from the standpoint of reliance. The court also suggested that market price responsiveness is more appropriately analyzed under the rubric of reliance because reliance emphasizes "what *actually* happened" as a result of a misrepresentation or omission, while materiality looks to its "likely potential."[6]

Accordingly, the *Nathenson* court held that the fraud on the market presumption of reliance is rebutted when the market price of the security is not affected by the alleged misstatement or omission.[7] Because the complaint revealed that the stock price fell after the alleged misrepresentations concerning the Phase II trials and rose when the truth was revealed, the presumption of reliance asserted by plaintiffs was rebutted (and the claim properly dismissed) for lack of a market response to the alleged misinformation.

---

[1] A plaintiff's reliance on the purportedly misleading statement or omission is a necessary element of the Rule 10b-5 cause of action. *See generally* 2 Thomas Lee Hazen, *The Law of Securities Regulation* § 13.2.1, at 468 (3d ed. 1995).

[2] *Nathenson,* 267 F.3d at 413 (citing *Basic*, 485 U.S. at 246-47 & n.24).

[3] The district court also determined that the element of reliance was not established, but its discussion "focused almost entirely on materiality." *Id.* at 414. Materiality requires that there be a substantial likelihood that the misrepresented or undisclosed information "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). A misrepresented or omitted fact is material if a reasonable investor would consider it important in making a decision. *See Basic*, 485 U.S. at 231-32.

[4] *Nathenson*, 267 F.3d at 415.

[5] 858 F.2d 1104 (5th Cir. 1988), *vacated on other grounds sub nom., Fryar v. Abell*, 492 U.S. 914 (1989).

[6] *Nathenson*, 267 F.3d at 418 (emphasis in original).

[7] *Id.* at 415.

Limited Approach To Issue of Market Price Response

Nathenson is a useful arrow in the Rule 10b-5 defendant's quiver because it justifies dismissing a fraud on the market case at the pleadings stage if it is clear that the subject security's market price was unaffected by the alleged misrepresentations. However, the decision also has a significant limiting aspect: In determining that reliance instead of materiality is the appropriate basis for analysis, the court effectively restricted the dispositive effect of the absence of a market price response to fraud on the market cases under Section 10(b) without providing any analytic justification for this limitation.

Although they have taken different approaches to the question, the federal courts have frequently analyzed the effect of market price responsiveness — both in the fraud on the market and other contexts — under the rubric of materiality.[8] In *Burlington Coat*, and again in *Oran v. Stafford*, 226 F.3d 275 (3d Cir. 2000), the Third Circuit explained that a materiality-based analysis is especially appropriate in fraud on the market cases. The court emphasized that the efficient markets doctrine underlying the fraud on the market theory holds that all material information (i.e., all information that that is significant to investors) is immediately reflected in the price of a security traded in an efficient market. Stated differently, if information relating to a security traded in an efficient market is material, then its public disclosure will affect the market price of the security. From this premise, the court concluded that if the public disclosure of information fails to affect a security's price, then the information must be immaterial, absent some other explanation for the lack of market movement. Thus, the economic underpinning of the fraud on the market theory allows a court to assess materiality "post hoc by looking to the movement, in the period immediately following disclosure, of the price of the firm's stock."[9]

Although *Oran* and *Burlington Coat* involved fraud on the market claims under Rule 10b-5, their materiality-based rationale is potentially more far-reaching. Materiality is a necessary element of several causes of action under the securities laws,[10] and must also be proved by the SEC and the government in enforcement or criminal proceedings based on fraud. The courts appear to agree that the same basic standard of materiality applies across the various securities statutes.[11] Thus, if the materiality of any statement or omission can be con-

---

[8] *See, e.g.*, *United States v. Bilzerian*, 926 F.2d 1285, 1298-99 (2d Cir. 1991) (holding, in a criminal prosecution under Section 10(b), that the absence of stock price movement is relevant to but not dispositive of materiality inquiry); *In re Apple Computer Sec. Litig.*, 886 F.2d 1109, 1116 (9th Cir. 1989) (reasoning, in a fraud on the market case, that "[d]ramatic price movements in response to an optimistic statement would provide a strong indication that the statement itself was material…."); *In re Fidelity/Micron Sec. Litig.*, 964 F. Supp. 539, 548 (D. Mass. 1997) ("A simple test of materiality in a fraud-on-the-market case is whether the alleged misrepresentation in fact affected the market."); *Geiger v. Solomon-Page Group, Ltd.*, 933 F. Supp. 1180, 1188 (S.D.N.Y. 1996) (reasoning that stock price movement is relevant to but not dispositive of the materiality inquiry); *Mathews v. Centex Telemanagement, Inc.,* No. C-92-1837-CAL, 1994 WL 269734, at *7 (N.D. Cal. 1994) ("Stock prices may sometimes indicate materiality, depending on the circumstances of a particular case."); *Wielgos v. Commonwealth Edison Co.*, 688 F. Supp. 331, 341 (N.D. Ill. 1988) (stating, in a civil action under Section 11 of the Securities Act, that the absence of stock price movement is not dispositive of the materiality inquiry), *aff'd on other grounds*, 892 F.2d 509 (7th Cir. 1989). *But see Flamm v. Eberstadt*, 814 F.2d 1169, 1180 (7th Cir. 1987) (treating lack of price movement as relevant to the quantum of damages); *McEwen v. Digitran Sys., Inc.*, 160 F.R.D. 631, 640 (D. Utah 1994) (analyzing stock price movement under the reliance element).

[9] *Oran*, 226 F.3d at 282.

[10] For example, materiality is a necessary element in civil claims involving misleading registration statements or prospectuses under Sections 11 and 12(a)(2) of the Securities Act, 15 U.S.C.A. §§ 77k(a) and 77l(a)(2), and actions involving misleading proxy statements under Section 14(a) of the Securities Exchange Act, 15 U.S.C.A. § 78n(a), and Rule 14a-9, 17 C.F.R. § 240.14a-9.

[11] *See, e.g.*, *Shaw v. Digital Equip. Corp.*, 82 F.3d 1194, 1217 (1st Cir. 1996); *Flamm*, 814 F.2d at 1174; *Geiger*, 933 F. Supp. at 1184; *see generally*, Hazen, *supra* n.1, at §13.5A, at 507.

clusively determined by whether it affects the market price of the security to which it refers, the absence of market price movement should defeat claims whenever materiality is a required element, provided the security is traded in an efficient market. When so understood, the lack of a market response is a powerful defense against all manner of claims under the securities laws.[12]

Nathenson undermines this argument because it adopts a reliance-based analysis rather than a materiality-based analysis. For instance, unlike materiality, reliance is not an element of a cause of action under Section 11 (except in limited citcumstances) or 12(a)(2) of the Securities Act,[13] and need not be established by the SEC or the government in enforcement or criminal proceedings under Rule 10b-5. Nor would *Nathenson's* analysis be helpful to defendants in fraud suits where the plaintiff alleges actual reliance as distinguished from a fraud on the market theory — even if the security was traded in an efficient market — because the plaintiff will claim to have relied on the misrepresentation or omission itself, not the integrity of the market price.[14] Under the *Nathenson* approach, then, the lack of a market price response to a fraudulent misrepresentation or omission will justify dismissal of a complaint only where fraud on the market is an essential part of a plaintiff's claim.

The *Nathenson* court provided no clear reason to prefer its reliance-based approach over the materiality-based analysis of *Oran* and *Burlington Coat*. Indeed, the court's determination that its analysis was dictated by *Basic* and *Abell* seems somewhat strained. Neither decision held that an efficient market's failure to respond to an alleged misrepresentation must be analyzed solely under the reliance element. And to the extent they indicate that a lack of market movement could rebut the presumption of reliance in a fraud on the market case, nothing in these decisions suggests that the same facts could not also be probative or dispositive of the materiality inquiry.[15] Moreover, the court's argument that reliance is the preferable basis for analysis because it looks to actual effects while materiality looks to likely probabilities simply fails to address the reasoning of *Oran* and *Burlington Coat*: If it is true that in an efficient market all material information will affect the stock price, then the lack of such an effect should — absent some other explanation — prove that the information was not material.

The *Nathenson* court's reliance-based approach is also problematic given the procedural posture of the case. The fraud on the market theory creates a rebuttable presumption of reliance, shifting the burden of persuasion on that element from the plaintiff to the defendant. It would seem difficult for a defendant to rebut the presumption at the Rule 12(b)(6) stage unless the court resorts to facts outside the complaint or requires the plaintiff to plead some explanation for the lack of a market

---

[12] Indeed, the United States District Court for the Eastern District of Pennsylvania recently dismissed a claim under Section 14(a) of the Securities Exchange Act reasoning that the lack of a market price response to the disclosure of information omitted from a proxy statement rendered that omission immaterial as a matter of law. *In re NAHC, Inc. Sec. Litig.*, No. Civ. A. 00-4020, 2001 WL 1241007 at *24 (E.D. Pa. Oct. 17, 2001). The court rejected plaintiffs' argument that the *Burlington Coat* and *Oran* decisions were limited to fraud on the market cases under Rule 10b-5 concluding that the standard of materiality adopted in *TSC Industries*, *supra* n.3, governs both claims. *Id. Compare with Justin Indus., Inc. v. Choctaw Sec., L.P.,* 920 F.2d 262, 266 n.4 (5th Cir. 1990) (summarily rejecting claim that lack of market movement defeated materiality in a Section 14(a) case, but without considering reasoning similar to that in *Oran* and *Burlington Coat*).

[13] It is also generally accepted that reliance is not required in an action under Section 14(a) and Rule 14a-9. *See* Hazen, *supra* n.1, §11.3, at 224.

[14] However, even in an actual reliance case, a plaintiff's reliance must be reasonable, and the fact that the marketplace found the information to be inconsequential would be strong evidence that reliance was not reasonable.

[15] Oddly, *Nathenson* did not rely on two prior Fifth Circuit decisions in which the court stated, in dicta, that a showing that the stock price was not affected by a misrepresentation would rebut the presumption of reliance. *See Fine v. American Solar King Corp.*, 919 F.2d 290, 299 (5th Cir. 1990); *Finkel v. Docutel/Olivetti Corp.*, 817 F.2d 356, 364 (5th Cir. 1987), *overruled on other grounds*, *Abell*, 858 F.2d at 1120. However, like *Basic* and *Abell*, neither of these decisions gives any reason to reject a materiality-based approach to the issue of market price responsiveness.

price response.[16] In contrast, a plaintiff must affirmatively plead and prove materiality, making a plaintiff's failure to explain the absence of a market price response a more appropriate basis for the dismissal of the claim.[17]

Given the analytic and procedural problems inherent in the decision, *Nathenson* may best be understood as an attempt to limit the legal effect of the economic doctrine underlying the fraud on the market theory while simultaneously recognizing that a stock price response to an alleged misrepresentation or omission is a necessary element of recovery under that theory.

Fifth Circuit Joins Majority of Circuits on Scienter Pleading Standards

In *Nathenson*, the Fifth Circuit also became the eighth federal court of appeals to rule on the scope of the pleading requirements for scienter imposed by the PSLRA.[18] Before the statute's enactment, the circuit courts adopted varying approaches to evaluating a securities fraud complaint's allegations of scienter. The Second Circuit took what was widely regarded as the most stringent approach and required that scienter allegations support a "strong inference of fraudulent intent," which a plaintiff could establish by alleging facts constituting strong circumstantial evidence of conscious misbehavior or recklessness, or showing that the defendant had both the motive and opportunity to commit fraud.[19]

Under the PSLRA, a complaint is subject to dismissal unless it states "with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind."[20] As the "strong inference" language suggests, the Second Circuit standard was the focus of the debate over this provision, with representatives, senators, and even the President claiming that it supported their various and conflicting positions. Consequently, the PSLRA's legislative history is muddled and has proved of little use to courts in addressing two significant questions left unanswered by the statute itself: (i) whether the statute's stringent pleading requirements altered prior case law holding that a securities fraud complaint may be based on allegations of severe recklessness; and (ii) whether the "motive and opportunity" approach to pleading scienter articulated by the Second Circuit remains valid.

With respect to the first issue, the *Nathenson* court — like all but one of the circuit courts to have addressed the issue — held that severe recklessness remains a sufficient basis for pleading scienter.[21] Before the PSLRA was enacted, there was general agreement

[16] The *Nathenson* court acknowledged that "in certain special circumstances public statements falsely stating information which is important to the value of a company's stock traded on an efficient market may affect the price of the stock even though the stock's market price does not soon thereafter change," but determined that dismissal was nonetheless warranted because "no such special circumstance is alleged or even hinted at here." 267 F.3d at 419.

[17] *But see Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 167 (2d Cir. 2000) (vacating Rule 12(b)(6) dismissal based in part on grounds that lack of stock price movement demonstrated immateriality because, although complaint did not allege change in share price, the issue should have been resolved in plaintiff's favor).

[18] Scienter is a necessary element of the Rule 10b-5 cause of action and refers generally to an intent to deceive, manipulate, or defraud. *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 & n.12 (1976).

[19] *See Chill v. General Elec. Co.*, 101 F.3d 263, 267 (2d Cir. 1996) (citing *Shields v. Citytrust Bancorp*, 25 F.3d 1124, 1128 (2d Cir. 1994)).

[20] 15 U.S.C.A. § 78u-4(b)(2); *see also* 15 U.S.C.A. § 78u-4(b)(3)(A) (providing that a complaint shall be dismissed if it fails to satisfy the pleading requirements of the Act).

[21] *Nathenson*, 267 F.3d at 409; *see also Florida State Bd. of Admin. v. Green Tree Fin. Corp.*, Nos. 99-3536, 99-3586, 99-3587, 2001 WL 1334728, at *7 (8th Cir. Oct. 25, 2001); *City of Philadelphia v. Fleming Cos.*, 264 F.3d 1245, 1259 (10th Cir. 2001); *Novak v. Kasaks*, 216 F.3d 300, 310 (2d Cir.), *cert. denied*, 531 U.S. 1012 (2000); *Greebel v. FTP Software, Inc.*, 194 F.3d 185, 200 (1st Cir. 1999); *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1284 (11th Cir. 1999); *In re Comshare, Inc. Sec. Litig.*, 183 F.3d 542, 550 (6th Cir. 1999); *In re Advanta Corp. Sec. Litig.*, 180 F.3d 525, 534 (3d Cir. 1999).

among the circuits that a showing of recklessness satisfied Rule 10b-5's scienter requirement. Because nothing in the PSLRA suggested any intent to alter the substantive law, these courts concluded that allegations giving rise to a strong inference of recklessness must be sufficient to satisfy the statute's pleading requirement.[22] The Ninth Circuit has taken a somewhat different approach, holding that "simple recklessness" is insufficient under the PSLRA and that a plaintiff must allege facts showing "deliberate recklessness."[23]

With respect to motive and opportunity allegations, the *Nathenson* court reviewed the three basic approaches to the question taken by the federal circuits:

- The Second and Third Circuits have held that a plaintiff can raise a strong inference of scienter if he alleges particular facts showing that the defendant had the motive and opportunity to commit fraud.[24] These courts reason that the PSLRA's adoption of the "strong inference" language implies pleading requirements roughly equal to those existing in the Second Circuit prior to the statute's passage.

- The Ninth Circuit has read the PSLRA's legislative history to raise the pleading bar higher than the one previously in force in the Second Circuit and held that motive and opportunity allegations are insufficient to satisfy the statute — only actual intent or "deliberate recklessness" will do.[25]

- With some minor variations among them, the First, Sixth, Tenth, and Eleventh Circuits have staked out a middle-of-the-road position: In these courts, allegations of motive and opportunity by themselves typically will not give rise to a strong inference of scienter, but are relevant factors to consider in determining whether the statutory standard is satisfied.[26] Although the PSLRA refers to the Second Circuit strong inference standard, these courts generally reason that the statute did not adopt or codify any particular method of pleading that inference.

The *Nathenson* court found the majority, middle-of-the-road approach persuasive. It held that while allegations of motive and opportunity are certainly relevant, "it would seem to be a rare set of circumstances indeed where those allegations alone are both sufficiently persuasive to give rise to a scienter inference of the necessary strength and yet at the same time there is no basis for further allegations also supportive of that inference."[27]

Although the middle-of-the-road approach has garnered majority support, a recent Eighth Circuit decision suggests that analytic distinctions between that position and the Second/Third Circuit approach may be more imagined than real. In *Florida State Bd. of Admin. v. Green Tree Fin. Corp.*, the court aligned itself with the majority approach, but noted that Second Circuit case law has "dramatically constricted" the types of motives that will suffice as allegations of scienter, rejecting as

[22] *See, e.g., Nathenson*, 267 F.3d at 409; *Comshare*, 183 F.3d at 550. In this regard, many courts have emphasized that Congress required a showing of a specific state of mind in other portions of the PSLRA — for instance, the statute creates a safe harbor for forward-looking statements unless they were made with "actual knowledge" of their falsity, *see* 15 U.S.C.A. § 78u-5(c)(1)(B) — which strongly suggests that Congress's general reference to the "required state of mind" in the pleading provisions was not intended to eliminate recklessness as a basis for a showing of scienter. *See, e.g.*, *Nathenson*, 267 F.3d at 409; *Greebel*, 194 F.3d at 200; *Bryant*, 187 F.3d at 1284.

[23] *In re Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 974 (9th Cir. 1999). Although it describes the required showing as one involving "some degree of intentional or conscious misconduct," *id.* at 977, *Silicon Graphics* does not explain how the "deliberate recklessness" standard differs from the law of scienter as it existed prior to the PSLRA.

[24] *See, e.g., Advanta*, 180 F.3d at 534-35; *Press v. Chem. Inv. Servs. Corp.*, 166 F.3d 529, 537-38 (2d Cir. 1999).

[25] *Silicon Graphics*, 183 F.3d at 979.

[26] *See, e.g.*, *City of Philadelphia*, 264 F.3d at 1261-62; *Greebel*, 194 F.3d at 197; *Bryant*, 187 F.3d at 1287; *Comshare*, 183 F.3d at 551.

[27] *Nathenson*, 267 F.3d at 412.

insufficient commonplace motives like a desire to maintain the appearance of profitability or a high stock price.[28] The court concluded that the Second Circuit inquiry, like the inquiry under the middle-of-the-road approach, is really "for facts that give a strong reason to believe that there was reckless or intentional wrongdoing," not the rote satisfaction of a "motive and opportunity" pleading rule.[29] This analysis finds support in the Second Circuit case law, which recognizes that "what is required when endeavoring to plead facts supporting a strong inference of scienter by showing motive and opportunity is not a bare invocation of 'magic words such as motive and opportunity' but an allegation of facts showing the type of particular circumstances that our case law has recognized will render motive and opportunity probative of a strong inference of scienter."[30]

Green Tree's synthesis of these decisions strongly suggests that all of the circuits — with the exception of the Ninth — are scrutinizing allegations of scienter under essentially the same test: whether all of the facts alleged with particularity in the complaint, including facts establishing motive and opportunity, support the statutorily required strong inference of scienter. The differences among the circuits appear to involve at most varying senses of how great the evidence of unusual, concrete, and personal motives must be to satisfy the scienter pleading requirement in circumstances otherwise suggesting fraud.

If you have any questions, please call Andrew B. Weissman at (202) 663-6612 or Sam J. Salario, Jr. at (202) 663-6373.

---

[28] 2001 WL 1334728, at *12.

[29] *Id.*

[30] *Rothman v. Gregor*, 220 F.3d 81, 90 (2d Cir. 2000) (quoting *Novak*, 216 F.3d at 311).

WILMER, CUTLER & PICKERING

2445 M Street, N.W.
Washington, D.C. 20037-1420
Telephone: (202) 663-6000
Facsimile: (202) 663-6363

Securities Practice Group

James E. Anderson
Brandon Becker
Stephen F. Black
Joseph K. Brenner
Mark D. Cahn
Richard W. Cass
Bruce E. Coolidge
Meredith Cross
Charles E. Davidow
Stuart F. Delery
Paul Engelmayer
Simon Firth
Robert F. Hoyt
Andrew Kaizer
Satish Kini
Michael R. Klein
Yoon-Young Lee
Lewis Liman
Robert B. McCaw
William McLucas
Mark S. Shelton
Marianne K. Smythe
Andrew N. Vollmer
Harry J. Weiss
Andrew B. Weissman
Soo J. Yim

Adam Abensohn
Robert G. Bagnall
Matthew A. Chambers
Douglas J. Davison
Colleen Doherty-Minicozzi
Sara E. Emley
Leon B. Greenfield
Fraser Hunter
David Lurie
Kevin McEnery
Jeffrey E. McFadden
Karen Mincavage
Bruce Newman
Gordon Pearson
Jeffrey Roth
Catherine M. Saadeh
Victoria E. Schonfeld
Erika Singer
Beth A. Stekler
William E. White
Jolie Zimmerman

This letter is for general informational purposes only and does not represent our legal advice as to any particular set of facts, nor does this letter represent any undertaking to keep recipients advised as to all relevant legal developments.

2445 M Street, N.W. Washington, D.C. 20037-1420 Telephone: (202) 663-6000
520 Madison Avenue New York, NY 10022 Telephone: (212) 230-8800
100 Light Street Baltimore, MD 21202 Telephone: (410) 986-2800
1600 Tysons Boulevard McLean, VA 22102-4826 Telephone: (703) 251-9700
4 Carlton Gardens London SW1Y5AA Telephone: 011 (44207) 872-1000
Rue de la Loi 15 Wetstraat B-1040 Brussels, Belgium Telephone: 011 (322) 285-4900
Friedrichstrasse 95 D-10117 Berlin Telephone: 011 (49-30) 2022-6400