
US Supreme Court Updates *Basic Inc. v. Levinson* Presumption of Reliance for Class Certification Motions in *Halliburton Co. v. Erica P. John Fund, Inc.*

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In *Halliburton Co. v. Erica P. John Fund, Inc.*, a decision authored by Chief Justice Roberts, the US Supreme Court on Monday reversed the Fifth Circuit's decision certifying a class in a securities fraud class action brought under section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5. In reversing the Fifth Circuit, the Court let stand the "presumption of reliance," which permits plaintiffs in securities fraud class actions to satisfy the statutory reliance requirement by invoking a presumption that the price of stock traded in an efficient market reflects all public, material information, including material misstatements. *See Basic Inc. v. Levinson*, 485 U.S. 224 (1988). However, the Court concluded that defendants could rebut this presumption of reliance at the class certification stage by introducing evidence that an alleged misrepresentation did not actually affect the market price of the stock. This decision helps clarify what evidence a court may consider in determining whether to certify a class in a securities fraud class action suit.

Although the Court did not put an end to the *Basic* presumption of reliance, the Court's decision in *Halliburton* provides companies a new tool to use to defeat 10b-5 suits. Previously, it was possible for a plaintiff to get a class certified on the basis of a presumption that class members, who were stockholders in an efficient market, relied upon defendants' alleged misrepresentations. Defendants could rarely effectively rebut this presumption in opposing class certification. Instead, defendants would have to wait until the merits of the case were reached—either at trial or through summary judgment—to offer evidence showing that the supposedly misleading statements had no impact on the company's stock price. Many corporate defendants, however, opted to settle securities fraud actions after a class was certified to avoid the costs and risks associated with additional discovery, motion practice, and trial; thus the issue of "price impact" was infrequently litigated.

The Court's decision in *Halliburton* almost certainly alters this dynamic. Defendants will now be able to introduce "direct" evidence at the class certification stage showing that an alleged misrepresentation did not actually affect the stock's price and, therefore, that the *Basic* presumption of reliance does not apply in a particular case. Therefore, if a defendant shows a lack of price impact

for an alleged misrepresentation—thus undercutting the "fraud-on-the-market" theory and rebutting the presumption of reliance—then the plaintiff will likely be unable to get a class certified because of an inability to satisfy the critical "predominance" requirement of Rule 23(b)(3).

Although future cases will determine the practical effect of the *Halliburton* decision in securities fraud class actions, this opinion will likely afford defendants who have failed to get a case dismissed prior to discovery an additional opportunity to resolve these matters favorably at an earlier stage of litigation.

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