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MICHELLE M. NEWCOMER

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FOCUS AREAS

Securities Fraud

Global Shareholder Litigation

Direct & Opt-Out

EDUCATION

Loyola University Maryland
B.B.A 2002

Villanova University School of Law
J.D. 2005

ADMISSIONS

Pennsylvania

New Jersey

United States Supreme Court

USCA, Second Circuit

USCA, Ninth Circuit

USCA, Tenth Circuit

USDC, District of New Jersey

USDC, District of Colorado

USDC, Eastern District of Pennsylvania

Michelle M. Newcomer, eDiscovery Counsel to the Firm, concentrates her practice in the area of eDiscovery, where she provides counsel to litigation teams across the Firm on eDiscovery matters arising in the Firm's securities, consumer, antitrust, and other complex actions. Michelle is adept and experienced in managing all aspects and phases of Discovery. She regularly leads discovery conferences and navigates complex issues regarding the preservation, search and production of electronically stored information, including disputes over custodians, search protocols and technology assisted review methodologies. Michelle also effectively manages large-scale document reviews using advanced analytic tools and strategic workflows, and briefs and argues eDiscovery motions where necessary.

Prior to serving in this role, Michelle focused her practice in the area of securities litigation, where she represented individual and institutional investors and Sovereign Wealth Funds in class actions, direct actions, and non-U.S. collective actions asserting violations of U.S. and foreign securities laws. She has been involved in dozens of securities class actions in which the Firm has served as Lead or Co-Lead Counsel, through all aspects of pre-trial, trial, and appellate proceedings, and was part of the trial team in the Firm's most recent securities fraud class action trial, which resulted in a jury verdict on liability and damages in favor of investors.

Michelle began her legal career with the Firm in 2005. Prior to joining the Firm, she was a summer law clerk for the Hon. John T.J. Kelly, Jr. of the Pennsylvania Superior Court.

Current Cases

- Apache Corp.

CASE CAPTION	*In re Apache Corp. Securities Litigation*
COURT	United States District Court for the Southern District of Texas
CASE NUMBER	4:21-CV-00575
JUDGE	Honorable George C. Hanks, Jr.
PLAINTIFFS	Court-appointed Lead Plaintiffs Plymouth County Retirement Association and the Trustees of the Teamsters Union No. 142 Pension Fund
DEFENDANTS	Apache Corporation, John F. Christmann IV, Timothy J. Sullivan, & Stephen J. Riney

CLASS PERIOD	September 7, 2016 to March 13, 2020, inclusive

This securities fraud class action arises from Apache's materially false and misleading statements regarding its purportedly groundbreaking oil and gas discovery in West Texas, which it dubbed "Alpine High." Starting in September 2016, Defendants claimed the play held copious amounts of valuable oil and gas on par with world-class plays like the Marcellus Shale in Pennsylvania and the Eagle Ford in Texas, which Apache could economically exploit, and thus drive company revenues for years to come.

Investors accepted the claims, and Apache's common stock price skyrocketed. However, Lead Plaintiffs' extensive investigation has revealed that Defendants' claims were baseless. Internal studies at Apache prior to September 2016 established that Alpine High was characterized by low-value gas, not valuable oil or gas resources. Confirming this, Apache's own production data from the wells it drilled at Alpine High showed that the area held hardly any oil and gas that could be economically exploited, let alone the vast amounts Defendants repeatedly touted to investors. Scrambling to contain the failure, Defendants fired multiple dissenters from inside the company and shielded Alpine High production data from ordinary disclosure and review—but they could sustain the sham only so long. The truth concerning Alpine High was gradually revealed to the public through a series of disclosures on October 9, 2017, February 22, 2018, April 23, 2019, October 25, 2019, and March 16, 2020, which collectively showed that the play was an unprofitable bust. Apache's stock prices fell sharply on each partial corrective disclosure, causing massive losses to defrauded shareholders.

On December 17, 2021, Plaintiffs filed a Consolidated Class Action Complaint on behalf of a putative class of investors, alleging that Apache, John Christmann IV, Timothy Sullivan, and Stephen Riney violated Section 10(b) of the Exchange Act by making materially false and misleading statements regarding the Alpine High play; and that Christmann IV, Sullivan, and Riney, as controlling persons of Apache, violated Section 20(a) of the Exchange Act. On September 15, 2022, Magistrate Judge Edison issued a Memorandum and Recommendation denying Defendants' motion to dismiss. On November 29, 2022, the Court overruled Defendants' objections to the Recommendation. The case is now in fact discovery, and the parties are engaged in briefing on Plaintiffs' motion for class certification.

Read Consolidated Class Action Complaint Here

- General Electric Company

CASE CAPTION	*Sjunde AP-Fonden, et al., v. General Electric Company, et al.*
COURT	United States District Court for the Southern District of New York
CASE NUMBER	1:17-cv-08457-JMF
JUDGE	Honorable Jesse M. Furman
PLAINTIFFS	Sjunde AP-Fonden and The Cleveland Bakers and Teamsters Pension Fund
DEFENDANTS	General Electric Company and Jeffrey S. Bornstein
CLASS PERIOD	March 2, 2015 through January 23, 2018, inclusive

This securities fraud class action case arises out of alleged misrepresentations made by General Electric ("GE") and its former Chief Financial Officer, Jeffrey S. Bornstein (together, "Defendants"), regarding the use of factoring to conceal cash flow problems that existed within GE Power between March 2, 2015, and January 24, 2018 (the "Class Period").

GE Power is the largest business in GE's Industrials operating segment. The segment constructs and sells power plants, generators, and turbines, and also services such assets through long term service agreements ("LTSAs"). In the years leading up to the Class Period, as global demand for traditional power waned, so too did GE's sales of gas turbines and its customer's utilization of existing GE-serviced equipment. These declines drove down GE Power's earnings under its LTSAs associated with that equipment. This was because GE could only collect cash from customers when certain utilization levels were achieved or upon some occurrence within the LTSA, such as significant service work.

Plaintiffs allege that in an attempt to make up for these lost earnings, GE modified existing LTSAs to increase its profit margin and then utilized an accounting technique known as a "cumulative catch-up adjustment" to book immediate profits based on that higher margin. In most instances, GE recorded those cumulative catch-up earnings on its income statement long before it could actually invoice customers and collect cash under those agreements. This contributed to a growing gap between GE's

recorded non-cash revenues (or "Contract Assets") and its industrial cash flows from operating activities ("Industrial CFOA").

In order to conceal this increasing disparity, Plaintiffs allege that GE increased its reliance on long-term receivables factoring (i.e., selling future receivables to GE Capital, GE's financing arm, or third parties for immediate cash). Through long-term factoring, GE pulled forward future cash flows, which it then reported as cash from operating activities ("CFOA"). GE relied on long-term factoring to generate CFOA needed to reach publicly disclosed cash flow targets. Thus, in stark contrast to the true state of affairs within GE Power—and in violation of Item 303 of Regulation S-K—GE's Class Period financial statements did not disclose material facts regarding GE's factoring practices, the true extent of the cash flow problems that GE was attempting to conceal through receivables factoring, or the risks associated with GE's reliance on factoring. Eventually, however, GE could no longer rely on this unsustainable practice to conceal its weak Industrial cash flows. As the truth was gradually revealed to investors—in the form of, among other things, disclosures of poor Industrial cash flows and massive reductions in Industrial CFOA guidance—GE's stock price plummeted, causing substantial harm to Plaintiffs and the Class.
In January 2021, the Court sustained Plaintiffs' claims based on allegations that GE failed to disclose material facts relating its practice of and reliance on factoring, in violation of Item 303, and affirmatively misled investors about the purpose of GE's factoring practices. In April 2022, following the completion of fact discovery, the Court granted Plaintiffs' motion for class certification, certifying a Class of investors who purchased or otherwise acquired GE common stock between February 29, 2016 and January 23, 2018. In that same order, the Court granted Plaintiffs' motion for leave to amend their complaint to pursue claims based on an additional false statement made by Defendant Bornstein. The Court had previously dismissed these claims but, upon reviewing Plaintiffs' motion—based on evidence obtained through discovery—permitted the claim to proceed.
On September 28, 2023, the Court entered an order denying Defendants' motion for summary judgment, sending Plaintiffs' claims to trial. In March 2023, the Court denied Defendants' motion for reconsideration of its summary judgment decision. Trial is set to begin in November 2024.

Read Fifth Amended Consolidated Class Action Complaint Here
Read Opinion and Order Granting and Denying in Part Motion to Dismiss Here
Read Order Granting Motion for Class Certification and for Leave to Amend Here
Click Here to Read the Class Notice
Read Opinion and Order Here (9/28/23)
Read Memorandum Opinion & Order Here (3/21/24)

Settled

- Pfizer, Inc.
  This securities fraud class action in Manhattan federal court arose out of Pfizer's concealment of clinical results for two arthritic pain drugs, Celebrex and Bextra. Despite being aware of significant cardiovascular adverse events in clinical trials, Pfizer misrepresented the safety profile of the drugs until the U.S. Food & Drug Administration discontinued a key trial, forced the withdrawal of Bextra from the market, and issued an enhanced warning label for Celebrex. Following a summary judgment order dismissing the case several weeks before trial was set to begin, we successfully appealed the dismissal at the U.S. Court of Appeals for the Second Circuit and the case was remanded for trial.
  After twelve years of litigation, the case resolved in 2016 with Pfizer agreeing to pay the shareholder class $486 million, the largest-ever securities fraud settlement against a pharmaceutical company in the Southern District of New York.

- Tenet Healthcare Corp.
  As co-lead counsel representing the State of New Jersey – Division of Investment, negotiated a groundbreaking multipart settlement in litigation arising from Tenet Healthcare's (Tenet) manipulation of the Medicare Outlier reimbursement system and related misrepresentations and omissions.
  The initial partial settlement included $215 million from Tenet, personal contributions totaling $1.5 million from two individual defendants—an unusual result in class action litigation—and numerous changes to the company's corporate governance practices. A second partial settlement of $65 million from Tenet's outside auditor, KPMG, addressed claims that it had provided false and misleading certifications of Tenet's financial statements. As a result of the settlement, various institutional rating entities now rank Tenet's corporate governance policies among the strongest in the United States.

News

- May 1, 2015 - Kessler Topaz Wins in Rare Securities Fraud Trial
- May 1, 2015 - Merck Vioxx Securities Litigation: Trial Approaches as the Court Finds Defendants' Opinion Statements Interpreting Scientific Data Actionable Under Omnicare

Awards/Rankings

- Pennsylvania Super Lawyers–Rising Star, 2012-2020