The Effects of *Halliburton Co. v. Erica P. John Fund, Inc.*, No. 13-317 (June 23, 2014) ("*Halliburton II*") on Securities Class Action Litigation

I. The *Halliburton II* Decision

- Halliburton requested that the Supreme Court overturn *Basic Inc. v. Levinson*, 485 U.S. 224 (1988). *Basic* provided that in Section 10(b) cases plaintiffs were entitled to a rebuttable presumption of reliance at class certification if plaintiffs were able to show that the defendant company’s stock traded on an efficient market.
  - This became known as the “fraud-on-the-market” presumption.
  - This became the basis for almost all Section 10(b) securities class actions.
- The Supreme Court in *Halliburton II* declined to overturn *Basic*.
- Nor did the Court require plaintiffs to prove price impact in order to benefit from the fraud-on-the-market presumption.
- The Court did, however, agree with Halliburton that it should be able to present evidence of a lack of price impact to rebut the fraud-on-the-market presumption.
- The Court held that when defendants can present evidence that their alleged misrepresentations did not impact the stock price, "*Basic’s* fraud-on-the-market theory and presumption of reliance collapse[.]
- The topic for today’s panel is how will this change securities class action litigation going forward.


- How is *Halliburton II* different from *Amgen* and *Halliburton I*?
  - *Amgen* – The Supreme Court held that plaintiffs do not need to establish materiality at class certification and that defendants cannot rebut the fraud-on-the-market presumption by showing a lack of materiality.
    - Materiality is often shown through price impact.
o Halliburton I – The Supreme Court held that plaintiffs do not need to show loss causation at the class certification stage to avail themselves of the fraud-on-the-market presumption.
  ▪ Loss causation is often shown through price movement as a result of a corrective disclosure.
• What does Halliburton II allow defendants to do to rebut the presumption of reliance that is different than Amgen or Halliburton I?
• Is an initial issue going to be whether defendants are “showing” no price impact or whether defendants are “showing” either no materiality or no loss causation – neither of which is allowed at class certification?

III. Litigating Price Impact
• How will this change litigating class certification?
  o More expensive
  o Battle of the experts
  o Will it have a significant effect on the number of cases being certified?
• Different scenarios
  o No price movement on the date of the alleged misrepresentation, but a significant price movement on the date of the “corrective disclosure.”
    ▪ Is the price drop on the “corrective disclosure” sufficient to show price impact or will plaintiffs have to show price movement on the date of the alleged misrepresentation?
  o Price movement on the date of the alleged misrepresentation, but no price movement on the date of the “corrective disclosure.”
    ▪ Is the price movement on the date of the alleged misrepresentation sufficient or must there be price impact on the date of the “corrective disclosure?”
  o A statement is alleged to be misleading because a defendant failed to disclose a risk. At a later date the risk materializes causing the stock price to drop.
    ▪ Is the resulting stock price drop from the materialization of the risk sufficient to show price impact on the date of the alleged
misrepresentation? How will the price impact of an omission be determined?

- No price movement on date of the alleged misrepresentation and confounding factors on date of "corrective disclosure."

- Does Halliburton II open the door for potentially more cases being certified?
  - The Supreme Court stated “a single market can process different kinds of information more or less efficiently, depending on how widely the information is disseminated and how easily it is understood.”
  - Does this suggest that if there is no price movement on an initial disclosure but the disclosure is subsequently highlighted (e.g., by an analyst or journalist), and the subsequent disclosure causes a stock drop, that plaintiffs will be able to claim the later disclosure as evidence of price impact?
  - Does the Court’s opinion expand the definition of an efficient market?

- Will plaintiffs rely more on Affiliated Ute?
  - Many cases can be characterized as either omissions or misrepresentation cases. To the extent plaintiffs have trouble showing price impact for cases dealing largely with omissions will they simply rely on Affiliated Ute?

IV. Settlement Issues

- Only 25% of securities class actions reach class certification (about 40% are dismissed and 35% settle before class certification). Does Halliburton II make it more or less likely that cases will settle before class certification?

- Does the additional expense and risk in class certification increase the leverage for defendants, plaintiffs or insurance carriers when negotiating a settlement?

- Will it be cheaper to settle before class certification than it is now?

- Conversely, if plaintiffs get past class certification, will it become significantly more expensive to settle a case?