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ARTICLE

Rebutting Price Impact In Securities Class Actions

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Defendants litigating securities cases historically faced long odds in defeating class certification. This stems in part from the US Supreme Court's 1988 decision in *Basic v. Levinson*, which created a rebuttable presumption of classwide reliance on a defendant's alleged misrepresentations.

For years, *Basic's* presumption was rebuttable in name only. That paradigm began to shift with the Supreme Court's 2014 decision in *Halliburton Co. v. Erica P. John Fund Inc.*, which allowed defendants to present evidence that the alleged misrepresentations did not affect the issuer's stock price.

The true seeds of a course correction, though, came four years ago in the Supreme Court case of *Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System*, or *GSG*, which identified the type of price impact evidence courts should consider at the class certification stage.

The US Court of Appeals for the Second Circuit's August 2023 decision in *Arkansas Teacher Retirement System v. Goldman Sachs Group Inc.*, or *ATRS*, sharpened *GSG*'s application to reinvigorate the rebuttable aspect of Basic's presumption. While *ATRS* creates a blueprint for defeating class certification, as the US Court of Appeals for the Third Circuit recently made clear in its July 30 decision in *San Diego County Employees Retirement Association v. Johnson & Johnson*, *ATRS*'s framework is not a one-size-fits-all defense.

An examination of cases post-*ATRS* illustrates how its successful application turns on the evidence in each case.

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** Jessica Violone, Katten summer associate, contributed to this article.*

CONTACTS

For more information, contact your Katten attorney or any of the following attorneys.

Kevin P. Broughel
+1.212.940.6343
kevin.broughel@katten.com

Sarah Eichenberger
+1.212.940.8788
sarah.eichenberger@katten.com

Zoe Lo
+1.212.940.6577
zoe.lo@katten.com