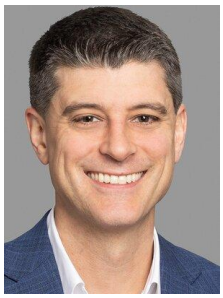
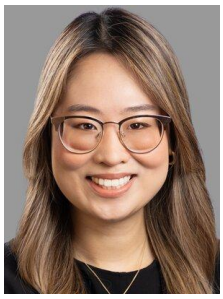
# Rebutting Price Impact In Securities Class Actions

By **Kevin Broughel, Sarah Eichenberger and Zoe Lo** (September 16, 2025)



Kevin Broughel

Sarah Eichenberger



Zoe Lo

Defendants litigating securities cases historically faced long odds in defeating class certification. This stems in part from the U.S. Supreme Court's 1988 decision in Basic v. Levinson, which created a rebuttable presumption of classwide reliance on a defendant's alleged misrepresentations.[1]

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.[2]

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.[3]

The U.S. 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.[4] While ATRS creates a blueprint for defeating class certification, as the U.S. 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' framework is not a one-size-fits-all defense.[5]

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

**The Post-ATRS Legal Framework**

Plaintiffs alleging securities fraud under Section 10(b) of the Securities and Exchange Act must establish that they bought or sold a security in reliance on a material misstatement. Basic v. Levinson created a classwide rebuttable presumption that when purchasing stock, investors rely on publicly available material information, including alleged misstatements, which are reflected in the stock price.[6]

In 2014, the Halliburton court held that "defendants should at least be allowed to defeat the [Basic] presumption at the class certification stage through evidence that the misrepresentation did not in fact affect the stock price."[7] Successfully applying the Halliburton decision, however, remained difficult, as few defendants could sever the link between the alleged misrepresentation and its presumptive effect on stock price.

The GSG court changed that dynamic by invigorating the price impact defense.

First, the GSG court held that although defendants bear the burden of persuasion, the

allocation of that burden is "unlikely to make much difference," as courts must "assess all the evidence of price impact" irrespective of its proponent,[8] even if the evidence overlaps with merits-based inquiries.[9] Second, the Supreme Court expressed doubt about the long-standing assumption that a "back-end price drop" after a corrective disclosure evidences price impact, especially when "there is a mismatch between the contents of the misrepresentation and the corrective disclosure."[10]

After remand, the Second Circuit in ATRS amplified the GSG court's instructions by mandating a "searching price impact analysis" when: (1) the challenged statement is generic and there is a considerable gap between it and the corrective disclosure; (2) the corrective disclosure does not directly reference the alleged misstatement; and (3) a generic risk disclosure was purportedly misleading by omission.[11]

Applying this framework to the evidence, the Second Circuit in ATRS decertified the class, holding there was "an insufficient link between the corrective disclosures and the alleged misrepresentations."[12] Accordingly, while ATRS did not ease defendants' burden, it showed how defendants could effectively rebut Basic's presumption.

**Broadening the Mismatch Analysis**

***The Evolution of the Matching Spectrum***

One of the ATRS court's most impactful contributions was its endorsement of a meaningful mismatch analysis, that is, a close comparison of the alleged misstatements and the corrective disclosures.[13] While this analysis is not new, the ATRS court revitalized the assessment by encouraging courts to apply both common sense and empirical evidence.

Matching exists on a spectrum, ranging from perfect matches and strong matches, to, in a post-ATRS world, weak or no matches.

A perfect match is self-evident. The so-called strong match, though, can be nebulous. It is exemplified by the Second Circuit's 2016 decision in In re: Vivendi Universal S.A. Securities Litigation, where, although the defendant's semigeneric statements about its comfortable liquidity situation were not perfectly aligned with later reports of massive refinancing needs, there was enough of an overlap to infer that the subsequent price declines corrected earlier price inflation.[14] For many years, this category was a catchall, even for statements with a loose connection.

The ATRS court broadened the mismatch spectrum by adding a category for generic statements with an attenuated link to the corrective disclosures, i.e., what can be thought of as a weak or no-match category.

The alleged misstatements in ATRS comprised platitudes: "[w]e are dedicated to complying fully with the letter and spirit of the laws"; "[i]ntegrity and honesty are at the heart of our business"; and "[w]e have extensive procedures and controls that are designed to identify and address conflicts of interest."[15] These generic statements were ill-matched to the more specific corrective disclosure that the U.S. Securities and Exchange Commission was investigating a transaction,[16] thereby severing the proverbial link and defeating the plaintiffs' price impact argument.[17]

***Exploring The Weak-to-No-Match End of the Spectrum***

Some courts have embraced ATRS' application of GSG to build out the weak-to-no-match

end of the spectrum.

In In re: Concho Resources Inc. Securities Litigation, for example, the U.S. District Court for the Southern District of Texas, after considering expert testimony and applying its own commonsense analysis,[18] concluded on April 7, 2025, that the defendants had severed the link between corrective disclosures and certain of the alleged misrepresentations.[19] In reaching this conclusion, the court adopted the defendants' categorization of the challenged statements and analyzed each category's relationship to the purportedly corrective disclosures.[20]

One category involved ATRS-type platitudes best exemplified by this statement: "Our operational and financial performance demonstrated our ability to consistently execute, control costs and capitalize on opportunities that strengthen our competitive position."[21] Analogizing these to the generic statements in GSG, the Concho court held that the alleged misstatements did not match corrective disclosures concerning financial results; revised production targets; and oil well manufacturing and project management, thus severing "the link between back-end price drop and front-end misrepresentation."[22]

A second category juxtaposed alleged misstatements about financial projections for fiscal year 2018 — including statements that investors could expect "more of the same in '18" — with corrective disclosures revealing "disappointing … results for the second quarter of 2019," according to the Concho court.[23]

Although this category was arguably more specific than the first, the Concho court nonetheless held that the mismatch was too great to support price impact because a "statement to expect 'more of the same' in one year cannot be corrected by a statement regarding the results in a different year."[24] In contrast, corrective disclosures "that suggest[ed] that the manufacturing mode [for well projects] was not as efficient or proven as previously publicized" were not a substantive mismatch and did support price impact.[25]

In In re: Kirkland Lake Gold Ltd. Securities Litigation, the U.S. District Court Southern District of New York compared a mining company's statements about prioritizing organic growth with its corrective announcement of acquiring a mine.[26] Although the challenged statements were somewhat less generic than in ATRS, the Kirkland court in March 2024 nonetheless identified a mismatch between misleading statements about an organic business growth strategy and a corrective disclosure concerning a specific mine acquisition with "unique characteristics" and "a particular valuation."[27]

In reaching this determination, the Kirkland court held that none of the contemporaneous analyst reports referred to the alleged misstatements, "let alone drew the inference that Kirkland was not considering acquisitions."[28]

The court also relied on testimony from two defense experts — a mining industry expert and an economics expert — to sever the link between the challenged statements and stock price movements.[29] The industry expert opined that the alleged misstatements would not have inflated the price because investors understood that long-term growth relies on both exploration and acquisitions.[30] And the economics expert offered alternative explanations for the price decline after the corrective disclosure.[31]

Another of ATRS' progeny, Shupe v. Rocket Companies Inc., bolstered the weak-to-no-match end of the spectrum. There, the plaintiffs alleged that the company's CEO falsely stated that Rocket was "seeing strong consumer demand," didn't "see interest rates going

up or down," and that direct-to-consumer and partner business channels were "all growing."[32] The company revealed the alleged truth when it disclosed an expected decrease of $18.5 billion in closed loan volume, and the fact that rising interest rates had diverted its focus to a less-profitable partner-network channel.[33]

In determining there was a mismatch between the alleged misstatements and the "corrective" disclosures, the U.S. District Court for the Eastern District of Michigan in September 2024 relied on the defendants' proffered expert, who noted that:

- At the same time that the CEO made optimistic statements about the company's future, the company disclosed a weaker financial performance relative to the previous quarter;
- Contemporaneous SEC filings and risk disclosures discussed how rising interest rates were adverse to the company's business; and
- "[A]t least 50" sell-side analyst reports from 17 different analysts during the putative class period did not mention the CEO's alleged misstatements.[34]

In denying class certification, the court held that these facts were "largely dispositive" and demonstrated a "considerable mismatch ... between the generic nature of the alleged misrepresentations and the specific revelation."[35] As such, the facts rebutted the Basic presumption of reliance.[36]

***The Perfect-to-Strong End of the Spectrum***

Although the ATRS court paved the way for meaningful change, the Basic presumption remains a significant hurdle when the allegations gravitate toward the perfect-to-strong-match end of the spectrum. This is illustrated in a recent Third Circuit decision, San Diego County Employees Retirement Association v. Johnson & Johnson.

In this case, a majority of the three-judge panel ruled on July 30 that the company failed to show there was a mismatch between the alleged misrepresentations and the company's subsequent disclosures.[37] While the court acknowledged that a mismatch could rebut the presumption of reliance, there was "no mismatch between the subject of the alleged misrepresentation" — the company's denials of purported product contamination and associated safety and liability issues — and the content of corrective disclosures largely from public trials, which allegedly contradicted the company's representations.[38]

Thus, the court held that the misrepresentations had resulted in a price impact, and that each corrective disclosure "was followed by a stock price decline for which there was no other explanation but the disclosure itself."[39] This case therefore is a reminder that the mismatch analysis will not always be successful in rebutting price impact.

***The Zillow Appeal and What It Could Mean for the ATRS Framework***

Another circuit case that could have meaningful ramifications for the ATRS framework is the Jaeger v. Zillow Group Inc. appeal pending before the U.S. Court of Appeals for the Ninth Circuit.[40]

Jaeger concerns an August 2024 decision by the U.S. District Court for the Western District of Washington to certify a class of shareholders challenging the company's alleged

misrepresentations about the accuracy of its home-pricing algorithm. The plaintiffs argued that the company corrected prior representations when it disclosed that it was pausing home acquisitions due to backlogs, employee layoffs and overpayments for some homes.

On appeal, the company argued, among other things, that the district court had failed under ATRS to consider evidence of a mismatch, because a corrective disclosure must "expressly and specifically negat[e]" the misstatement to establish price impact.[41] Whether, and to what extent, the Ninth Circuit adopts the company's arguments remains to be seen.

**Takeaways**

As reflected in the above cases, ATRS has ushered in a more searching analysis of price impact. For defendants wishing to take advantage of this emerging standard, ATRS and its progeny offer several important lessons.

***Mismatching involves a two-pronged attack aimed at both genericism and substance.***

Defendants leveraging the mismatch defense will be best positioned to demonstrate a weak match or no match by attacking alleged misstatements as generic.

For defendants using this approach, a commonsense comparison of the statements to the corrective disclosures can provide a compelling price impact rebuttal. Defendants may also rely on a lack of public reports referencing the alleged misstatements as evidence that they were not incorporated in the stock price.

Even defendants faced with purported misstatements that have a stronger, but still tangential, relationship to corrective disclosures can argue that the corrective disclosures are misnomers if they contained references to specific events unrelated to the purported misstatements.

***Early expert involvement can be critical.***

Defendants should strongly consider engaging industry and economic experts who can help rebut the presumption of reliance.

Industry experts can explain relevant commercial dynamics and provide alternative explanations for stock price movements. Similarly, economic experts can review market data to prepare event studies and other analyses disassociating disclosures from stock price movements, including by highlighting confounding facts or events.

***Market commentary and analyst reports matter.***

ATRS and its progeny also illustrate the importance of carefully reviewing available market commentary and analyst reports.

Several recent cases have relied on the presence — or, in the case of Shupe and ATRS, the absence — of market commentary in determining whether market participants viewed the alleged misstatements as generic. Moreover, analyst reporting and other public market disclosures can be used as evidence that the corrective information was already in the marketplace before its alleged disclosure, undermining any argument that investors reacted to new material information.

**Conclusion**

In sum, courts that before ATRS treated a back-end price decline as de facto evidence of price impact now undertake a searching price impact analysis that can defeat class certification. A rigorous review and comparison of all relevant disclosures, combined with a thorough analysis of market reporting and opinions from economic and industry experts, can provide a viable pathway for defeating class certification.

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*Kevin P. Broughel and Sarah Eichenberger are partners, and Zoe Lo is an associate, at Katten Muchin Rosenman LLP.*

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



[1] Basic v. Levinson, 485 U.S. 224, 248 (1988).

[2] Halliburton Co. v. Erica P. John Fund Inc., 573 U.S. 258 (2014).

[3] Goldman Sachs Grp. Inc. v. Arkansas Tchr. Ret. Sys., 594 U.S. 113 (2021).

[4] Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp. Inc., 77 F.4th 74 (2d Cir. 2023).

[5] San Diego Cty. Emps. Ret. Assoc. v. Johnson & Johnson, No. 24-1409, 2025 WL 2176586 (3d Cir. July 30, 2025).

[6] Basic, 485 U.S. at 248 (1988).

[7] Halliburton Co., 573 U.S. at 279.

[8] Id. at 126-27.

[9] Goldman Sachs Grp. Inc., 594 U.S. at 122.

[10] Id. at 123.

[11] Arkansas Tchr. Ret. Sys., 77 F.4th at 102. The plaintiffs in ATRS relied on an inflation-maintenance theory of price impact where they argued the alleged misstatements maintained an already inflated stock price. Under that theory, price impact "must be measured via stock price decreases occurring after the alleged misstatements were revealed to be false." In re: Goldman Sachs Grp. Inc. Sec. Litig., 579 F. Supp. 3d 520, 527 (S.D.N.Y. 2021).

[12] Arkansas Tchr. Ret. Sys., 77 F.4th at 105. The Second Circuit relied on expert evidence in reaching this conclusion. Among other things, the court examined the news coverage and market commentary surrounding the alleged "corrective disclosures" and found it unpersuasive evidence of price impact, noting that "commentary touching upon only the same subject matter" as the corrective disclosures "cannot be enough." Id. at 104. The

court further noted that on the "other side of the ledger" was an analysis by defendants' expert of "880 analyst reports published during the Class Period," "none of which reference[d]" the challenged disclosure. Id.

[13] Id. at 100.

[14] In re: Vivendi Universal, S.A. Sec. Litig., 838 F.3d 223, 235-37 (2d Cir. 2016).

[15] Arkansas Tchr. Ret. Sys., 77 F.4th at 82.

[16] Id. at 83.

[17] Id. at 105.

[18] The defendants' expert opined in part that certain alleged misstatements were generic because no equity analysts referred to them in their reports or made a connection between the alleged misstatements and the "corrective" disclosure. The court observed that while the lack of analyst commentary was some evidence of the statements being generic, it was not dispositive. In re: Concho Res. Inc. Sec. Litig., No. 4:21-cv-2473, 2025 WL 1040379 *13-14 (S.D. Tex. Apr. 7, 2025).

[19] Concho, 2025 WL 1040379 at *13-14.

[20] Id. at *10.

[21] Id. at *14; In re: Concho Resources Inc., Sec. Litig., No. 4:21-cv-2473, Dkt. 25 at ¶ 169.

[22] Concho, 2025 WL 1040379 at *14.

[23] Id. at *17.

[24] Id.

[25] Id. at 16.

[26] In re: Kirkland Lake Gold Ltd. Sec. Litig., No. 20-cv-4953(JPO), 2024 WL 1342800 (S.D.N.Y. Mar. 29, 2024).

[27] Id. at *8.

[28] Id. at *9.

[29] Id.

[30] Id.

[31] Id.

[32] Shupe v. Rocket Cos. Inc., 752 F. Supp. 3d 735, 756, 778 (E.D. Mich. 2024).

[33] Id. at 758.

[34] Id. at 779.

[35] Id. at 779, 781.

[36] Id. at 782. Subsequent to Shupe, the Southern District of New York applied ATRS to a series of disclosures concerning an issuer's investment in a fund, finding that only two out of thirteen alleged misstatements were an appropriate match to the corrective disclosures about the purported diversion of money from the fund. Sjunde AP-Fonden v. Goldman Sachs Grp., Inc., 2024 WL 1497110 (S.D.N.Y. Apr. 5, 2024), Report & Recommendation Adopted, 18-cv-12084-VSB-KHP, Slip OP. (S.D.N.Y. Sept. 4, 2025) (Dkt. 355).

[37] San Diego Cty. Emps. Ret. Assoc., No. 24-1409, 2025 WL 2176586 at *4.

[38] Id.

[39] Id.

[40] Jaeger v. Zillow Group Inc., 746 F.Supp.3d 1025 (W.D. Wash. 2024).

[41] Appellant's Opening Brief at 26-27, Jaeger v. Zillow Grp. Inc., No. 24-6605 (9th Cir. Jan. 8, 2025).