Global Class Action Annual Report

The top 10 most complicated class action asset recovery opportunities of 2020
Even amidst the global COVID-19 pandemic, securities litigation in 2020 managed to keep pace with recent market trends, including a continued shift to event driven litigation and an increased globalization of class action asset recovery opportunities.

Bookended by significant amendments to the Dutch Act on the Resolution of Mass Claims in Collective Action (Wet afwikkeling massaschade in collectieve actie, or WMACA) on January 1, 2020, and the European Parliament endorsing its new directive on representative actions for the protection of the collective interests (Collective Redress Directive) on November 24, 2020, multiple noteworthy developments last year will drive increasing complexities and volume in collective redress opportunities over the next decade.

In keeping with recent trends, and notwithstanding the challenges of court and business closures, there was no shortage of case filing activity in the courts. First, there were over 90 separate claim filing or registration deadlines in 2020. Further, Broadridge identified more than 450 newly filed class or collective actions worldwide related to investments in publicly traded securities, bringing the total number of active cases we are tracking but that have not settled to well over 1,000. Moreover, over 140 new settlements were reached in 2020, totaling more than $6 billion (USD).

The increasing complexities of financial instruments and high volume of cases make it harder for investors to stay ahead of business needs and obligations. Methods to identify settlements are complex, processing requirements are arduous, and new legal theories, laws and jurisdictions are entering the ecosystem at an unprecedented pace. As a result, even when opportunities are identified and claims are timely filed, many of them are denied for foot-faults, failures to plan, and errors in the claim filing process.

In this report, Broadridge, an active partner supporting the class action needs of the financial services industry, highlights the 10 most complex class action cases of 2020. Collectively, these settlements total over $3.4 billion (USD).*

Our report aims to detangle the complexities of the class action world to better equip hedge funds, pension funds, asset managers, custodian banks, investment advisors, and broker-dealers for participation in future cases.

We hope you will find this report instructive on how to prepare for even the most complex of cases, and that it facilitates the proper and accurate adjudication of your claims.

*This figure does not include settlement amounts for two cases currently pending.

**The Top 10 Most Complex Cases of 2020**

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**Industry Trends: Noteworthy developments in this dynamic market in 2020**

- **New Class Action Laws Worldwide.** In 2020, we witnessed no fewer than seven material collective redress developments worldwide—we already touched on the Netherlands’ WMACA amendments and the European Union’s monumental Collective Redress Directive (of which we should begin seeing member countries comply with in 2021). To that list we can add: (a) Italy’s “provisions regarding class actions”, (b) Scotland’s Civil Litigation Expenses and Group Proceedings Bill, (c) Germany’s extension of its KapMuG procedure, (d) Ontario’s amendments to its Class Proceedings Bill, and (e) the People’s Republic of China’s provisions on Issues of Representative Securities Litigation.

- **Increased Participation in Opt-in Litigation.** Opt-in opportunities have been active for years now, particularly in certain EU and South American jurisdictions, but this year we saw a sharp spike in investor interest in opt-in litigation worldwide.

- **Broker-Dealers Shift in Service.** Historically, broker-dealers have implemented robust processes to ensure their retail clients received appropriate notice of claim filing opportunities, but very few provided claim filing services. In 2020 saw a seismic shift in thinking for many broker-dealers. A number of large global wealth managers began providing such support to their retail clients, and many more are planning to provide such services in 2021.

- **Increased Reliance on Outsourcing.** While a significant percentage of the market outsourced portfolio monitoring services, many institutional investors have historically handled claim filing in-house. In 2020, Broadridge heard from institutional investors that, with growing international developments and increasing complexities worldwide, the burden is too high to manage these services internally. Accordingly, many firms that traditionally handled this work in-house are now looking to shift the risk through outsourcing, ensuring opportunities are not missed and recoveries are maximized.

Broadridge continues to expand its suite of services around notification, portfolio monitoring, and class action asset recovery on behalf of asset managers as the industry grows and becomes more complex.
Broadridge offers a robust, end-to-end portfolio monitoring and asset recovery service with no jurisdictional or financial product limits. Accordingly, this report looks at cases globally that involve publicly traded securities or other financial instruments where a class or collective action mechanism was used. We include cases brought under each respective country’s securities and antitrust laws.

Broadridge’s proprietary database tracks U.S. securities class actions; antitrust class actions involving securities and complex financial products; international collective actions; U.S. SEC and DOJ enforcement actions; and other “mass redress” cases that involve financial instruments in which our clients transact.

We broadly refer to all of these types of litigations as “class actions.”

Cases are ranked by complexity from the standpoint of a financial institution’s ability to recover its funds, or those of its investors and clients. We define complexity from an administration standpoint as:

- The lift and work involved in tracking and monitoring the case
- The difficulty of housing, scrubbing and preparing the data
- Complexities in jurisdictional, judicial and/or filing requirements
- Complex deadlines (e.g., more than one settlement, with different legal rights and deadlines)
- Complexities in the security/product of interest
- Competing litigations (multiple law firm/funder groups)
- Any other factors that impacted the ability to file a complete and comprehensive claim and recover assets

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Our Methodology

BROADRIDGE

Class actions are complex. Broadridge simplifies every step. We’ve included this scannable glossary to provide everyone a clear understanding of the terms used in this report.

Certification
The judicial process whereby a court examines whether a case shall be permitted to proceed as a class action.

Claim Filing Deadline
The court-approved date by which all claims must be filed by class members.

Claims Administrator
A court-approved third-party that handles the claims administration process in compliance with the terms of the settlement agreement.

Class
A group of individuals who have suffered a similar loss or harm, whose claims are brought in a singular lawsuit.

Class Action
A lawsuit brought by one or more individuals on behalf of others who are similarly situated. Under U.S. law, a case is only a class action after it is “certified” by a court.

Class Action Notice
A court-approved notice sent out by the claims administrator that describes the cause of action, the class claim, the class itself, how class members can enter an appearance through a lawyer, how members can request exclusion, and information regarding the binding nature of class judgments.

Class Counsel
The lawyers or law firms that are appointed by the court to represent the class representative and all class members.

Class Member
A person or entity on whose behalf a class action lawsuit has been filed.

Class Period
The specific time period during which the unlawful conduct is alleged to have occurred.

Complaint
A formal legal document that sets out the facts and legal reasons the filing party (“plaintiff”) believes a claim can be brought against the other party (“defendant”).

Exclusion Request
The formal request from a class member to be removed from the class.

Fair Fund
A fund established by the U.S. SEC to distribute disgorgements (wrongful profits), penalties and fines to defrauded investors.

Final Approval Order
A court order that approves (as is or with modification) a class action settlement.

Lead Plaintiff
A person, group of persons, or entity that is selected by the court to represent the interests of all class members.

Market Loss
The actual out-of-pocket loss that an investor had for eligible transactions during the class period.

Opt-Out
The act of a class member electing not to be part of the class action lawsuit.

Plan of Allocation
The stated methodology by which a class action recovery is allocated among eligible claimants; literally, it is a plan for allocating the settlement fund.

Preliminary Approval Order
A court order that indicates initial approval of a class action settlement, and directs the parties to begin the notification process, as well as to solicit opt-outs and objections. The settlement is subject to final approval and modifications.

Proof of claim
A form that is completed with the necessary information requested by the claims administrator to process a claim.

Pro Rata
The percentage of settlement funds paid out to each eligible investor of its total recognized loss as calculated pursuant to the Plan of Allocation.

Recognized Loss
The loss amount calculated for the claim based on the court-approved Plan of Allocation.

Security
The financial instrument that is part of the particular class action.

Settlement Amount
The funds available to be distributed to the eligible class members pursuant to the Plan of Allocation.
GSE Bonds Antitrust Litigation

JUST THE FACTS

FULL CASE NAME: In re GSE Bonds Antitrust Litigation (1:19-cv-01704)

CLASS DEFINITION: All persons and entities who or which entered a GSE bond transaction with one or more defendants or a direct or indirect parent, subsidiary, affiliate, or division of a defendant during the class period (January 1, 2009, through and including January 1, 2019).


SETTLEMENT AMOUNT: $386,500,000 total

SECURITY: Any and each unsecured bond or debt instrument (i.e., senior debt, subordinated debt, and junior subordinated debt) regardless of currency or credit quality, issued by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Farm Credit Banks, and Federal Home Loan Banks.

COURT: United States District Court for the Southern District of New York

JUDGE: Honorable Jed S. Rakoff

CLAIMS ADMINISTRATOR: A.B. Data, Ltd.

CLASS COUNSEL: Scott + Scott Attorneys at Law LLP and Lowey Dannenberg, PC

LEAD PLAINTIFFS: Joseph M. Torsella, in his official capacity as the Treasurer of the Commonwealth of Pennsylvania; City of Birmingham Retirement and Relief System; Electrical Workers Pension Fund Local 103, I.B.E.W.; and Local 103, I.B.E.W. Health Benefit Plan

INITIAL COMPLAINT FILED: February 22, 2019

PRELIMINARY APPROVAL ORDER ENTERED: October 29, 2019, and December 12, 2019

FINAL APPROVAL ORDER ENTERED: June 16, 2020

CLAIM FILING DEADLINES: February 28, 2020, and May 12, 2020

GSE Bonds are not backed by the full faith and credit of the U.S. government.

A.B. Data, Ltd.

CLAIMS ADMINISTRATOR:

JUDGE: Honorable Jed S. Rakoff

COURT: United States District Court for the Southern District of New York

GSE Bonds Antitrust Litigation

Numerous eligible CUSIPs

These settlements require that claimants provide detailed supporting documentation, including trade-by-trade GSE bond transaction data with 11 required data fields for each transaction. Business records, or data kept by a financial institution in the ordinary course of business, are not enough to prove a claim in this case. Failure to provide adequate supporting documentation for all transactions in addition to the data set will lead to rejection of the claim.

IMPACT: All filers are required to submit the supporting documentation needed to prove the claim before verification of the claim will take place.

Detailed supporting documentation required

The class period for the eligible transactions began over a decade ago.

IMPACT: Typically, most financial institutions and individuals only keep copies of statements, broker confirmation and house data relating to their accounts for seven years. As such, given the length and the start of the class period, it is hard for a class member to: (a) provide transaction information longer than 7-10 years, and (b) provide any supporting documentation. This could severely limit class members’ ability to provide all eligible transactions and reduce or eliminate their recovery.

Old class period

The Administrative Challenges

IMPACT: Portfolio monitoring to determine eligibility is vastly more complicated. Claim preparation and filing can take hundreds of hours just to get the data in the proper format and confirm that all the eligible CUSIPs are identified in the trade data. Significant quality assurance measures are also needed to ensure accuracy and completeness on the part of both the filer and the claims administrator.

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Just the facts

**FULL CASE NAME:** Shah v. Zimmer Biomet Holdings, Inc. (3:16-cv-00815)

**CLASS DEFINITION:** All persons or entities who, between June 7, 2016, and November 7, 2016, inclusive, purchased or otherwise acquired Zimmer Biomet Holdings, Inc. (“ZBH”) common stock and/or call options, and/or wrote ZBH put options, and were damaged thereby.

**THE ALLEGATIONS:** Plaintiffs allege that Zimmer Biomet Holdings, which is the product of a $13.4 billion merger between two medical device competitors, Zimmer Holdings, Inc. and Biomet Inc., issued false and misleading statements and/or omitted material facts regarding the success of the merger and ZBH’s expected financial performance during the class period, affecting approximately 31.9 million shares of ZBH common stock.

**SETTLEMENT AMOUNT:** $50,000,000

**SECURITY:** ZBH common stock, call options and put options

**COURT:** United States District Court for the Northern District of Indiana

**JUDGE:** Honorable Philip P. Simon

**CLAIMS ADMINISTRATOR:** JND Legal Administration

**CLASS COUNSEL:** Glancy Prongay & Murray LLP

**LEAD PLAINTIFFS:** Rajesh M. Shah; Matt Brierly

**INITIAL COMPLAINT FILED:** December 2, 2016

**PRELIMINARY APPROVAL ORDER ENTERED:** May 21, 2020

**FINAL APPROVAL ORDER ENTERED:** September 18, 2020

**CLAIM FILING DEADLINE:** October 19, 2020

An Overview

Plaintiffs allege ZBH and its senior leadership misled investors and concealed material information from the market.

The Administrative Challenges

- Recognized losses for shares purchased pursuant to or traceable to the June 2016 or August 2016 offerings will be eligible for a claim under Section 11 of the Securities Act. The recognized loss for common stock under both Sections 10(b) and 11 will be the maximum of the recognized loss amount calculated under the provisions of each. A claimant must have suffered an overall market loss with respect to their overall transactions in Zimmer Biomet securities during the class period. To the extent that the market loss is less than the claimant’s recognized claim, the recognized claim will be limited to the amount of the market loss.

- IMPACT: This challenge leads to a more complicated and involved review and quality assurance process to confirm the accuracy and completeness of the claims administrator’s findings and to ensure an accurate recovery.
## Bondholder LIBOR Settlements

**Settlement Amount:** $68.625 million

**Settlement Period:** 13 years old

**Class Period:** August 1, 2007, to May 31, 2010.

**Securities:** Any U.S. dollar-denominated debt security: (a) with a CUSIP number; (b) on which interest was payable at any time during the class period; and (c) where that interest was payable at a rate expressly linked to U.S. dollar LIBOR.

**Recovery:** Based on a claimant’s pro rata share of the net settlement fund.

**IMPACT:** Typically, most financial institutions and individuals only keep copies of statements, broker confirmations and house data relating to their accounts for seven years.

**Class Period:** Over a decade, spanning from August 1, 2007, to May 31, 2010.

**Settlements:** This settlement involves bonds and debt securities consisting of more than 40,000 individual CUSIPs.

**Unique Complexity:** In order to obtain the list of eligible CUSIPs, anyone that wishes to access the list must qualify as an Authorized Recipient by personally executing an acknowledgement of the Protective Order and thereafter may only disclose such data to other Authorized Recipients. Each Authorized Recipient will also need to certify to the court in writing that they have destroyed all data (CUSIP standard descriptions, CGS ISIN identifiers, CINS identifiers, etc.) within 60 days of the resolution of the Bondholder LIBOR Action.

**Complicated Loss Formula:** Each claimant will need to calculate its Total Suppressed Interest Payment Amount which requires summing each of its Individual Suppressed Interest Payment Amounts received over the class period. This process requires multiple calculations for each day during the three-year class period that the claimant received an Authorized Interest Payment on a qualifying debt security. Recovery is then based on a claimant’s pro rata share of the net settlement fund.

**Preliminary Approval Order Entered:** July 5, 2017, December 5, 2018, and May 5, 2020

**Final Approval Order Entered:** December 16, 2020

**Claim Filing Deadline:** December 28, 2020

On February 9, 2012, plaintiffs filed cases alleging artificial manipulation of the London Interbank Offered Rate ("LIBOR") for the U.S. dollar over a period of several years. Eight years and two dismissals later, plaintiffs have now reached settlements totaling $68.625 million. These preliminary settlements range from $6.25 million to $17.9 million and represent a partial settlement of all bondholder plaintiff claims.

This $68.625 million settlement is one of the many LIBOR-based antitrust litigations consolidated in In re LIBOR-Based Financial Instruments Antitrust Litigation, MDL No. 2262, No. 11 Civ. 2613, pending in the United States District Court for the Southern District of New York. To date, the total settlement amount across this MDL for alleged LIBOR manipulation is approaching the $1 billion mark.

### An Overview

**Date:** December 28, 2020

**Settlements:**

- **Settlement Amount:** $68,625,000
- **Class Period:** August 1, 2007, to May 31, 2010
- **Securities:** Any U.S. dollar-denominated debt security: (a) with a CUSIP number; (b) on which interest was payable at any time during the class period; and (c) where that interest was payable at a rate expressly linked to U.S. dollar LIBOR.
- **Recovery:** Based on a claimant’s pro rata share of the net settlement fund.

**IMPACT:**

- **Typically:** Most financial institutions and individuals only keep copies of statements, broker confirmations and house data relating to their accounts for seven years.
- **This settlement involves bonds and debt securities consisting of more than 40,000 individual CUSIPs.**

**Unique Complexity:**

- In order to obtain the list of eligible CUSIPs, anyone that wishes to access the list must qualify as an Authorized Recipient by personally executing an acknowledgement of the Protective Order and thereafter may only disclose such data to other Authorized Recipients. Each Authorized Recipient will also need to certify to the court in writing that they have destroyed all data (CUSIP standard descriptions, CGS ISIN identifiers, CINS identifiers, etc.) within 60 days of the resolution of the Bondholder LIBOR Action.

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Each claimant will need to calculate its Total Suppressed Interest Payment Amount which requires summing each of its Individual Suppressed Interest Payment Amounts received over the class period. This process requires multiple calculations for each day during the three-year class period that the claimant received an Authorized Interest Payment on a qualifying debt security. Recovery is then based on a claimant’s pro rata share of the net settlement fund.

**IMPACT:**

- The difficulty projecting potential distributions, preparing an accurate claim form and then auditing the claims administrator’s distribution determination, is vastly increased in this case where we have a long, historic class period, involving over 40,000 eligible CUSIPs.
Just the facts

FULL CASE NAME: In re PG&E Corporation Securities Litigation (18-cv-03509)

CLASS DEFINITION: All persons and institutions that purchased or acquired PG&E’s publicly traded debt and/or equity securities from April 29, 2015, through November 15, 2018, inclusive.

THE ALLEGATIONS: Plaintiffs allege that throughout the class period PG&E Corporation and Pacific Gas and Electric Company made false and/or misleading statements for failing to maintain its electricity transmission and distribution networks in compliance with safety requirements and regulations promulgated under state law, leading up to the wildfires that ravaged Northern California in October 2017 (the “North Bay Fires”) and November 2018 (the “Camp Fire”), including violations of U.S. federal securities laws.

SETTLEMENT AMOUNT: Ongoing litigation pending bankruptcy stay

SECURITY: PG&E publicly traded securities

COURT: United States District Court for the Northern District of California

JUDGE: Honorable Edward J. Davila

CLAIMS ADMINISTRATOR: Prime Clerk

CLASS COUNSEL: Labaton Sucharow

LEAD PLAINTIFFS: Public Employees Retirement Association of New Mexico

INITIAL COMPLAINT FILED: June 12, 2018

PRELIMINARY APPROVAL ORDER ENTERED: N/A

FINAL APPROVAL ORDER ENTERED: N/A

CLAIM FILING DEADLINE: April 16, 2020 (bar date for prepetition claims in the bankruptcy proceeding)

An Overview

In October 2017, North Bay Fires devastated Northern California.

On June 8, 2018, the California Department of Forestry and Fire Protection (“Cal Fire”) published its findings alleging that PG&E’s purported violations of California law, including the California Public Utilities Commission’s safety regulations, were responsible for the North Bay Fires that devastated Northern California in October 2017. All told, these fires burned approximately 249,000 acres, destroyed 8,898 structures, and killed 44 people across nine counties resulting in estimated damages in excess of $17 billion. This news was part of a broader story, including an investigation by the SEC shortly after the wildfires started. Over the course of several months the stock price of PG&E dropped $30 per share.

On June 12, 2018, plaintiffs filed suit alleging PG&E allegedly made false and misleading statements and omissions about its safety and compliance initiatives. Cases were consolidated on December 14, 2018, and soon thereafter PG&E commenced voluntary Chapter 11 bankruptcy proceedings, which automatically stayed the securities class action underway. Pursuant to orders in the bankruptcy proceedings, eligible investors with Rescission or Damage Claims (losses suffered as a result of the alleged fraudulent actions as part of the securities class action) had until April 16, 2020, to file their proof of claim forms to prevent their claims against the debtors from being discharged and forever barred.

The Administrative Challenges

Bankruptcy proceedings present unique challenges and considerations

Example 1: Unlike claim filing deadlines in securities cases, bankruptcy deadlines are strict, and no late filings are permitted.

Example 2: All claim filings become part of the public claims register and can be seen by anyone and some clients have a desire to not have their claims or trading known publicly.

Example 3: Section 510(b) of the Bankruptcy Code subordinates Rescission or Damage Claims based upon purchases of debt securities to all other creditors; and it also subordinates Rescission or Damage Claims based upon purchases of equity securities even lower, to the same level of treatment as holders of other equity securities, meaning secured and priority creditors may exhaust the business assets prior to their claims being paid.

Each claim must be individually filled out and submitted with required documentation.

IMPACT: As a result, separate claim forms needed to be submitted for each client, greatly increasing the effort and resources required to timely complete and review each individual submission.
First Solar Inc., a solar panel manufacturer, settled this eight-year-old securities class action but not before two trips to the Ninth Circuit and one appeal to the U.S. Supreme Court (writ of certiorari denied). The case concerns an allegedly fraudulent scheme to conceal several manufacturing defects in its solar panels—the first of which cost the company $260 million to remediate, and the second of which led to a 90% stock drop by the end of the class period when news had settled.

This settlement does not resolve the factually related derivative suit pending in Arizona state court or the opt-out action pending in the District of Arizona.

The court-approved Plan of Allocation was exceptionally complicated in several ways. For example, the Plan includes an artificial inflation table that requires class members to calculate the price impact on First Solar common stock that the six alleged corrective disclosures had.

**Impact:** This challenge leads to a more complicated and involved review and quality assurance process to confirm the accuracy and completeness of the claims administrator’s findings and to ensure an accurate recovery.

**Unusually complicated loss formula**

First Solar Securities Litigation

**JUST THE FACTS**

**Full Case Name:** Smilovits v. First Solar, Inc. (2:12-cv-00555)

**Class Definition:** All persons and entities that purchased or otherwise acquired First Solar publicly traded securities during the period between April 30, 2008, and February 28, 2012, inclusive.

**The Allegations:** Plaintiffs allege that defendants artificially inflated the price of First Solar securities by issuing materially false and misleading statements and omitted material information regarding First Solar’s solar modules.

**Settlement Amount:** $350,000,000

**Security:** First Solar, Inc. common stock

**Court:** United States District Court for the District of Arizona

**Judge:** Honorable David G. Campbell

**Claims Administrator:** Gilardi & Co. LLC

**Class Counsel:** Robbins Geller Rudman & Dowd LLP

**Lead Plaintiffs:** Mineworkers’ Pension Scheme, British Coal Staff Superannuation Scheme

**Initial Complaint Filed:** March 15, 2012

**Preliminary Approval Order Entered:** March 2, 2020

**Final Approval Order Entered:** June 30, 2020

**Claim Filing Deadline:** July 1, 2020

**An Overview**

Defendants allegedly undertook a fraudulent scheme to conceal manufacturing defects in its solar panels.

**The Administrative Challenges**

The court-approved Plan of Allocation was exceptionally complicated in several ways. For example, the Plan includes an artificial inflation table that requires class members to calculate the price impact on First Solar common stock that the six alleged corrective disclosures had.

**Impact:** This challenge leads to a more complicated and involved review and quality assurance process to confirm the accuracy and completeness of the claims administrator’s findings and to ensure an accurate recovery.
Wirecard AG

On June 25, 2020, Wirecard admitted that $2.1 billion (€1.9 billion) in cash on its balance sheets probably never existed.

Litigation is already underway in a consolidated class action in the United States (In re Wirecard AG Securities Litigation, in the U.S. District Court for the Eastern District of Pennsylvania) with another five opt-in proceedings being pursued in Germany against Wirecard’s auditor, Ernst & Young (“E&Y”) and/or the German Federal Financial Supervisory Authority (“BaFin”)/German Financial Reporting Enforcement Panel (“FREP/DPR”).

Significantly, since Wirecard filed for bankruptcy and is no longer a solvent counterparty, Wirecard investors brought cases against its auditor for wrongful auditing, and against BaFin for allegedly failing to comply with its statutory duties to prevent market manipulation. Additionally, four investor groups are pursuing recovery in Wirecard’s insolvency proceedings.

These competing actions are brought by some of the world’s leading international law firms with various funders, and in some cases, differing time periods, and legal or damage theories. Any interested client must weigh the various litigations and determine which provides the best opportunity for recovery, which varies greatly depending on investments. For the German opt-in litigations, soft registration deadlines began in the fourth quarter of 2020, with hard deadlines of October 26, 2020, in the insolvency proceedings (per court order) in Germany.

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<td>DIRT/Therium</td>
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On June 25, 2020, Wirecard admitted that $2.1 billion (€1.9 billion) in cash on its balance sheets probably never existed.
5. WIRECARD AG

The Administrative Challenges

International opt-in

First, most of the opportunities here involve collective actions and not a settled class action. To participate, you must get involved before the settlement process and be part of the litigation. Claimants must work with a law firm and litigation funder, which can make the process longer and more involved. Second, in many opt-in litigations, there are options. Like here, there are multiple cases on parallel tracks. In order to weigh the various options, claimants must understand the differences between cases, their legal theories, damage calculations, and potential outcomes. They must also understand how those differences impact their losses and trading patterns, which requires a very individualized review. Finally, various firms and funders may have different theories and contractual terms.

**IMPACT:** There are several steps that must be completed to be part of the litigation. Data for potential damage calculations must be provided to the funder. Claimants who wish to remain anonymous at first can have an agent do this on their behalf. After a review of the information, clients who are interested in pursuing a claim can enter into a funding agreement, at which point fulsome data and claim filing can proceed, provided that it is legal for the firm and/or client to participate in matters like this. Further, since this must be done before a settlement is entered into in order to participate, the process is longer and active participation in the litigation may be necessary.

International exchange and complex instruments

Interested parties have several options to pursue recovery for losses incurred because of the alleged Wirecard scandal.

**IMPACT:** With no fewer than six class actions and parallel insolvency proceedings, it is important for institutional investors to understand time periods, defendants, and damage theories in relation to their trading patterns and appetite for exposure. For example, an investor may be prohibited, or may decline to bring a claim against the auditor defendant, while still pursuing recovery against BaFin or participating in one of the insolvency proceedings. With Wirecard in insolvency, each of these proceedings must carefully be considered because future recovery efforts may not be pursued.

Concurrent insolvency actions

Eligible securities may include securities listed on the Frankfurt Stock Exchange in Germany and Wirecard ADRs publicly traded over the counter in the United States.

**IMPACT:** This requires a higher-level review to locate each transaction and confirm the transaction occurred on the correct exchange.

German law and claim filings

The participants who have filed or will file a lawsuit and "claim" via the opt-in litigation will be known to the court and the defendants. This is a requirement under German law.

**IMPACT:** Many potential participants may not want to file since disclosure of their identity to the defendants and the court may impact business or other legal dealings they may have with the defendants.

Concurrent insolvency actions

Wirecard filed for insolvency on June 25, 2020, and interested parties have no fewer than four separate opportunities to participate in the proceedings.

**IMPACT:** The indebtedness and insolvency of Wirecard will complicate recovery as shareholders' fraud claims will be part of the same pro rata distribution with other unsecured claims.

Additional filing costs

These litigations may involve additional costs and additional contractual relationships.

**IMPACT:** Participating in an opt-in litigation may involve additional costs and additional contractual relationships. Unlike a U.S. class action, each potential claimant is treated separately, and each individual case has its own funding and paperwork requirements. Typically, there are fees associated with filing in these matters. Funding agreements and costs will differ depending on the case in which the claim is filed, and the law firm and litigation funder.
Annual Class Action Report 2020: Canadian FX Price-Fixing Class Action

**Canadian FX Price-Fixing Class Action**

**Just the facts**

**FULL CASE NAME:** Mancinelli v. Royal Bank of Canada (Ontario; CV-15-536174CP); and Béland v. Banque Royale du Canada (Québec; 200-06-000189-152)

**CLASS DEFINITION:** All persons in Canada who, between January 1, 2003, and December 31, 2013, entered into an instrument traded in the foreign exchange (“FX”) market, either directly or indirectly through an intermediary, and/or purchased or otherwise participated in an investment or equity fund, mutual fund, hedge fund, pension fund or any other investment vehicle that entered into an instrument traded in the foreign exchange market.

**THE ALLEGATIONS:** The class actions in Ontario and Québec arise from an alleged conspiracy among the defendants to fix, raise, maintain, stabilize, control, or unreasonably enhance the prices of currency purchased in the foreign exchange market.

**THE SETTLEMENT AMOUNT:** $109,047,205 (CAD) across 13 settlements

**SECURITY:** FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts, options on FX futures contracts, and other instruments traded in the FX market in Canada or on a Canadian exchange.

**COURT:** Ontario Superior Court of Justice and the Superior Court of Québec

**JUDGE:** Justice Paul Perell (Ontario); Justice Clause Bouchard (Québec)

**CLAIMS ADMINISTRATOR:** Mogerman LLP

**CLASS COUNSEL:** Siskinds LLP, Sotos LLP, Koscie Minsky LLP and Camp Fiorante Matthews Mogerman LLP

**LEAD PLAINTIFFS:**
- Ontario action: Joseph S. Mancinelli, Carmen Principato, Douglas Serroul, Luigi Carrozzi, Manuel Bastos and Jack Oliveira in their capacity as the Trustees of the Labourers’ Pension Fund of Central and Eastern Canada, and Christopher Staines. Québec action: Christine Béland.
- Staines. Québec action: Christine Béland.

**INITIAL COMPLAINT FILED:** September 2015

**PRELIMINARY APPROVAL ORDER ENTERED:**
- On July 4, 2018, and on August 24, 2018, the Courts approved the plaintiffs’ Plan of Allocation.

**FINAL APPROVAL ORDER ENTERED:**
- Thirteen settlements approved from November 9, 2016, through January 24, 2019

**CLAIM FILING DEADLINE:**
- January 15, 2020 (amended)

**SETTLEMENT AMOUNT:**

**$109M**

**An Overview**

Plaintiffs allege dozens of banks and financial institutions participated in an unlawful conspiracy to fix the price of currency purchased in the foreign exchange or foreign currency market, and to fix key foreign exchange benchmark rates over a period of 11 years. To date, we have seen 13 settlements and, in April 2020, Justice Perell certified a class action for the remaining non-settling defendants in Ontario.

**The Administrative Challenges**

These cases involve multiple calculations to determine the eligible participation amount before applying one of five different formulas depending on the instrument, on a trade-by-trade basis, to arrive at a claims value. Calculations include applying the correct currency ratio for the correct instrument, adjusting the sum relative to damage factors including liquidity and trade size, and appropriately discounting certain trades based on the time of trade and the eligible participation amounts. Additionally, claim amounts vary based on whether the claimants are direct or indirect claimants.

**IMPACT:** Complex recognized loss calculations increase the amount of both time and expertise required to accurately calculate each claim’s recognized loss amount. An incorrect calculation can lead to claims not being filed and will lessen the ability to review and challenge a claims administrator’s determination, if needed.

**IMPACT:** These settlements involve FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts, options on FX futures contracts and other instruments traded in the FX market.

**IMPACT:** This challenge impacts a variety of areas in the case. First, portfolio monitoring is made more complicated by the size of the searches and resulting data exports. Second, the time required to prepare and file claims can be increased exponentially. Finally, significant quality assurance measures are needed to ensure accuracy and completeness of the files before they can even be filed.

**Complex damage calculations**

These cases involve multiple calculations to determine the eligible participation amount before applying one of five different formulas depending on the instrument, on a trade-by-trade basis, to arrive at a claims value. Calculations include applying the correct currency ratio for the correct instrument, adjusting the sum relative to damage factors including liquidity and trade size, and appropriately discounting certain trades based on the time of trade and the eligible participation amounts. Additionally, claim amounts vary based on whether the claimants are direct or indirect claimants.

**IMPACT:** Complex recognized loss calculations increase the amount of both time and expertise required to accurately calculate each claim’s recognized loss amount. An incorrect calculation can lead to claims not being filed and will lessen the ability to review and challenge a claims administrator’s determination, if needed.

**Numerous eligible securities**

These settlements involve FX spot transactions, outright forwards, FX swaps, FX options, FX futures contracts, options on FX futures contracts and other instruments traded in the FX market.

**IMPACT:** This challenge impacts a variety of areas in the case. First, portfolio monitoring is made more complicated by the size of the searches and resulting data exports. Second, the time required to prepare and file claims can be increased exponentially. Finally, significant quality assurance measures are needed to ensure accuracy and completeness of the files before they can even be filed.

**Complicated security type**

Unlike most cases, which involve a company’s common stock, the FX instruments involved here are very complicated and can be difficult to identify.

**IMPACT:** First, portfolio monitoring is complicated by the fact that these instruments do not have CUSIPs. Filers must create one-off procedures to identify and export the data. Second, the claims filing process becomes vastly more complicated because the data is generally in a different format than a normal data extract. Significant work is needed to format and review data before a submission can be filed. Likewise, the opportunity for administrative error increases, and care must be taken to ensure your claims are paid accurately.
In 2014, American Realty Capital Properties disclosed that some of its financial results were overstated. The resulting $1.025 billion settlement represents approximately 50% of the lead plaintiff’s estimated recoverable damages—which by itself is remarkable when considering that the median settlement in a claim by investors of $1 billion or more is less than 3%.

In addition to the shareholder class action, VEREIT settled with the SEC on June 23, 2020, agreeing to pay an $8 million fine that will be distributed to harmed investors as part of a Fair Fund. The claims filing deadline for the VEREIT Fair Fund has not been announced as of the date of this report.

In 2014, American Realty Capital Properties disclosed that some of its financial results were overstated. ARCP’s Audit Committee also revealed that the financial errors were identified, but intentionally not corrected, and other errors in other financial metrics, including adjusted funds from operations, were intentionally made. This revelation led to a 36% stock drop and five years of litigation.

There are over 10 types of securities that are included in this matter: (a) ARCP common stock purchased during the class period between February 28, 2013, and October 29, 2014, inclusive; (b) 8 ARCP debt securities purchased at the initial offering on or about July 23, 2013, or purchased during the eligible period; (c) ARCP preferred stock purchased at the initial offering on or about January 3, 2014, or purchased during the eligible period; (d) ARCP common stock received as a result of the ARCT IV Merger or the Cole merger that occurred during the class period; and (e) ARCP preferred stock received as the result of the ARCT IV Merger.

The court-approved Plan of Allocation included unusually complicated recognized loss calculations for the eligible security types under both Sections 10(b) and 11 calculations.

The challenge increases the amount of both time and expertise required to accurately calculate each claim’s recognized loss amount. An incorrect calculation can lead to claims not being filed and will lessen the ability to review and challenge a claims administrator’s determination, if needed.

The common stock was impacted by two mergers and a follow-on offering, while preferred stock was impacted by one merger during the class period.

IMPACT: Due to the inconsistent nature of transactional records associated with shares acquired pursuant to a merger, separate reviews must be performed to ensure that any shares exchanged in the merger are properly categorized according to the case requirements. Failure to adequately identify shares acquired via a merger can lead to a claim being found ineligible or of lower value.
This litigation is part of a larger, decade-old, multidistrict litigation, In re LIBOR-Based Financial Instruments Antitrust Litigation.

An Overview

The $187 million aggregate settlement pool includes Exchange-Based plaintiffs who transacted in Eurosouls futures contracts and options on Eurodollars futures with seven of the defendant banks (there remain nine non-settling banks still litigating the case). The Exchange-Based plaintiffs allege the defendant banks manipulated the U.S. Dollar London Interbank Offered Rate (LIBOR or U.S. Dollar LIBOR) to benefit their trading positions in the suppression of LIBOR causing the price of Eurodollar futures to be suppressed or artificially inflated during the class period.

The Administrative Challenges

The class period begins on January 1, 2003.

IMPACT: Typically, most financial institutions and individuals only keep copies of statements, broker confirmation and house data relating to their accounts for seven years. As such, given the length and the start of this class period, it is hard for a class member to: (a) provide transaction information longer than 7-10 years; and (b) provide any supporting documentation that may be needed. As a result, this could cause the class member to not provide all potentially damaged Eurodollar futures contracts and/or options on Eurodollars futures and impact their potential recognized loss.

Unusually complicated loss formula or “Plan of Allocation”

The court-approved Plan of Allocation was exceptionally complicated and provides for distribution of 75% of the net settlement fund on the basis of pro rata “Recognized Net Loss” and 25% on the basis of pro rata “Recognized Volume.” And all of that is subject to a guaranteed minimum payment of $20.

IMPACT: This challenge requires you to first, have a deep understanding of the legal and economic principles in the Plan necessary to build an appropriate algorithm to calculate the damages of your claim. Second, while you will want to do this in every case, it is particularly important in a complicated case like this to ensure proper handling of each claim by the claims administrator.

Complex instruments involved

Unlike most cases, which involve a company’s common stock, this case involved Eurodollar futures contracts and/or options on Eurodollars futures transacted on various exchanges.

IMPACT: This challenge impacts a variety of areas of the case. Portfolio monitoring—knowing if you are even eligible—is vastly more complicated. Claim preparation and filing can take hundreds of hours just to get the data in the proper format. And significant quality assurance measures are needed to ensure accuracy and completeness. Further, cases as complicated as these all but ensure a complex audit and deficiency process. In order to be able to handle the claims administrator’s requests, your data will need to be in order. In addition, mistakes can happen, and all work—yours and the claims administrator’s—should be checked and audited in order to ensure maximum recovery. Finally, if you are recovering on behalf of multiple clients and/or accounts, putting those funds back into the proper account can be complex, and care should be taken.

Identification of hedger or swap dealer

Whether you were identified as a hedger or a swap dealer plays a role in determining if any discounts are applied during the loss formula calculation.

IMPACT: Requires a higher level of review to check and audit the claimant’s and the claims administrator’s calculations to ensure maximum recovery.

Old class period

The class period begins on January 1, 2003.

IMPACT: Typically, most financial institutions and individuals only keep copies of statements, broker confirmation and house data relating to their accounts for seven years. As such, given the length and the start of this class period, it is hard for a class member to: (a) provide transaction information longer than 7-10 years; and (b) provide any supporting documentation that may be needed. As a result, this could cause the class member to not provide all potentially damaged Eurodollar futures contracts and/or options on Eurodollars futures and impact their potential recognized loss.

Unusually complicated loss formula or “Plan of Allocation”

The court-approved Plan of Allocation was exceptionally complicated and provides for distribution of 75% of the net settlement fund on the basis of pro rata “Recognized Net Loss” and 25% on the basis of pro rata “Recognized Volume.” And all of that is subject to a guaranteed minimum payment of $20.

IMPACT: This challenge requires you to first, have a deep understanding of the legal and economic principles in the Plan necessary to build an appropriate algorithm to calculate the damages of your claim. Second, while you will want to do this in every case, it is particularly important in a complicated case like this to ensure proper handling of each claim by the claims administrator.

Complex instruments involved

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Identification of hedger or swap dealer

Whether you were identified as a hedger or a swap dealer plays a role in determining if any discounts are applied during the loss formula calculation.

IMPACT: Requires a higher level of review to check and audit the claimant’s and the claims administrator’s calculations to ensure maximum recovery.

FULL CASE NAME: In re LIBOR-Based Financial Instruments Antitrust Litigation (Master File No. 11-md-2262)

CLASS DEFINITION: All persons (other than defendants, their employees, affiliates, parents, subsidiaries and co-conspirators) that transacted in LIBOR-based Eurodollars futures or options on exchanges such as the Chicago Mercantile Exchange (“CME”) from January 1, 2003, through May 31, 2011.

THE ALLEGATIONS: Plaintiffs allege that defendant banks artificially manipulated U.S. Dollar LIBOR and Eurodollars futures during the class period by misreporting their borrowing costs to the organization that calculated LIBOR. The alleged manipulation of the U.S. Dollar LIBOR rate allegedly caused Eurodollars Futures prices to be suppressed and/or inflated to artificial levels, thereby causing class members to pay artificial prices for Eurodollars Futures during the class period.

SETTLEMENT AMOUNT: $187,000,000 USD across seven settlements

SECURITY: Eurodollars futures contracts and/or options on Eurodollars futures transacted on exchanges, such as the CME.

COURT: United States District Court for the Southern District of New York

JUDGE: Honorable Naomi Reice Buchwald

CLAIMS ADMINISTRATOR: A.B. Data, Ltd.

CLASS COUNSEL: Kirby McInerney LLP and Lovell Stewart Halebian Jacobson LLP

LEAD PLAINTIFFS: Metzler Asset Management GmbH (f/k/a Metzler Investment GmbH), FTC Capital GmbH (advisor to plaintiffs FTC Futures Fund SICAV and FTC Futures Fund PCC Ltd.), Atlantic Trading USA, LLC, 3D030 Trading LLC, Gary Francis and Nathaniel Haynes

INITIAL COMPLAINT FILED: April 15, 2011

PRELIMINARY APPROVAL ORDER ENTERED: March 2, 2020

FINAL APPROVAL ORDER ENTERED: September 17, 2020

CLAIM FILING DEADLINE: December 1, 2020
Valeant Pharmaceuticals Securities Litigation—Two Parallel Cases

Just the facts (U.S.)

**FULL CASE NAME:** In re Valeant Pharmaceuticals International, Inc. Securities Litigation (5:15-cv-07658)

**CLASS DEFINITION:** All persons and entities, wherever they may reside or may be domiciled, who, during the period between January 4, 2013, and March 15, 2016, inclusive.

**THE ALLEGATIONS:** Plaintiffs allege that Valeant inflated its stock price through a series of fraudulent business practices, including ties to the now-defunct specialty pharmacy, Philidor. Valeant’s U.S. listed shares fell over 90% when news of the scandal broke.

**SETTLEMENT AMOUNT:** $1,210,000,000 USD

**SECURITY:** Valeant equity securities and Valeant debt securities, including Valeant common stock; options on Valeant common stock; or sold put options on Valeant common stock, during the period between January 4, 2013, and March 15, 2016, inclusive.

**CLAIMS ADMINISTRATOR:** Gilardi & Co. LLC

**CLASS COUNSEL:** Gilardi & Co. LLC

**INITIAL COMPLAINT FILED:** October 22, 2015

**PRELIMINARY APPROVAL ORDER ENTERED:** January 23, 2020

**FINAL APPROVAL ORDER ENTERED:** June 15, 2020

**CLAIM FILING DEADLINE:** May 6, 2020

**JUDGE:** Honorable Michael A. Shipp

**COURT:** United States District Court for the District of New Jersey

**Just the facts (Canada)**

**FULL CASE NAME:** In re Valeant Pharmaceuticals International, Inc. Securities Litigation (500-06-000783-163)

**CLASS DEFINITION:**

- **Primary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled who, during the period February 27, 2012, to November 12, 2015, acquired Valeant’s securities in the primary market and held some or all of such securities at any point in time between October 19, 2015, and November 12, 2015, excluding any claims in respect of Valeant’s securities acquired in the U.S. (but not excluding any claims in respect of Valeant’s 4.5% Senior Notes due 2023 offered in March 2015).

- **Secondary Market Sub-Class:** All persons and entities, wherever they may reside or may be domiciled who, during the period February 27, 2012, to November 12, 2015, acquired Valeant’s securities in the secondary market and held some or all of such securities at any point in time between October 19, 2015, and November 12, 2015, excluding any claims in respect of Valeant’s securities acquired in the United States.

**THE ALLEGATIONS:** Investors allege that Valeant artificially inflated the price of its shares through a series of material misrepresentations and fraudulent business practices between February 27, 2012, and November 12, 2015.

**SETTLEMENT AMOUNT:** $94,000,000 CAD

**SECURITY:** (a) Valeant common shares (purchased pursuant to one of nine different offering memoranda or prospectuses); (b) Valeant 6.75% senior notes due 2018 (2018 6.75% Notes); (c) Valeant 7.50% senior notes due 2021 (2021 7.50% Notes); (d) Valeant 5.625% senior notes due 2021 (2021 5.625% Notes); (e) Valeant 5.50% senior unsecured notes due 2023 (2023 5.50% Notes); (f) Valeant 5.375% senior unsecured notes due 2020 (2020 5.375% Notes); (g) Valeant 5.875% senior unsecured notes due 2023 (2023 5.875% Notes); (h) Valeant 4.50% senior unsecured notes due 2023 (2023 4.50% Notes); and (i) Valeant 6.125% senior unsecured notes due 2025 (2025 6.125% Notes).

**COURT:** Superior Court of Quebec

**JUDGE:** Justice Peter Kalichman

**CLAIMS ADMINISTRATOR:** Epiq Systems, Inc.

**CLASS COUNSEL:** Siskinds LLP and Faguy & Co.

**INITIAL COMPLAINT FILED:** August 29, 2017

**PRELIMINARY APPROVAL ORDER ENTERED:** October 6, 2020

**FINAL APPROVAL ORDER ENTERED:** November 16, 2020

**CLAIM FILING DEADLINE:** February 15, 2021

**An Overview**

Valeant Pharmaceuticals International (now Bausch Health Companies) was a Canadian pharmaceutical company that for a period of several years allegedly artificially inflated revenues and profits through a clandestine network of pharmacies, deceptive pricing and reimbursement practices, and fictitious accounting. When news of this practice broke, investors saw Valeant’s stock drop 90% over the course of two years, wiping out over $100 billion in shareholder equity.

As is often the case in securities class actions involving Canadian domiciled companies, there were parallel, or sister, class actions filed in the United States and Canada. The U.S. action is the largest settlement against a pharmaceutical manufacturer, and the ninth largest settlement since the passage of the Private Securities Litigation Reform Act of 1995 (PSLRA).

**SEE ADMINISTRATIVE CHALLENGES PAGE 28 >>>
The Administrative Challenges (continued from page 27)

For the U.S. settlement: (a) Section 10(b) of the Exchange Act recognized losses will be calculated for common stock shares, debt securities and call and put options; (b) Section 20A of the Exchange Act recognized losses will be calculated for common stock purchases between June 1, 2015, and June 15, 2015, these losses will supersede any recognized loss calculated for these shares under Section 10(b); and (c) for common stock shares purchased pursuant to the March 2015 offering, a Section 11 recognized loss will be calculated for these shares, and the claimant will receive the larger recognized loss amount of either the Section 10(b) amount or Section 11 amounts. A claimant must have suffered an overall market loss with respect to their overall transactions in Valeant securities during the class period. To the extent that the market loss is less than the claimant’s Recognized Claim, the Recognized Claim will be limited to the amount of the market loss.

**IMPACT:** This challenge leads to a more complicated and involved review and quality assurance process to confirm the accuracy and completeness of the claims administrator’s findings and to ensure an accurate recovery.

Multiple eligible security types

Between the two cases, there are more than a dozen types of eligible Valeant securities, including common stock; options on Valeant common stock; defined to be the purchase or acquisition of call options and the sale of put options; and many various Valeant senior notes.

**IMPACT:** First, identifying these types of securities through a standard portfolio monitoring process is difficult because the acquisition may not be reflected as a “purchase” in the underlying transactional data. Second, even after the transactions have been identified as eligible, additional work is required to ensure all data is populated into the required filing format prior to submission. Failure to accomplish either can lead to a failure to file, a reduced distribution, or a rejected claim.

An international exchange

For the Canadian case, the Plan of Allocation uses the principle of last-in-first-out (LIFO)—where securities are deemed to be sold in the opposite order that they were purchased—in the calculation. In other words, the last securities purchased are deemed to be the first sold.

**IMPACT:** This is different from the United States case, where first-in, first-out (FIFO) is used.

Complex recognized loss calculations

For the Canadian settlement, the primary market sub-class, shares are determined to be eligible or non-eligible based on their respective purchase and sales dates and such purchase must be pursuant to one of nine different offering memoranda or prospectuses. After offsetting profits for those purchases, the compensable damages must then be risk adjusted to determine a claimant’s compensation from the net settlement fund, which will itself be distributed on a pro rata basis.

**IMPACT:** Complex recognized loss calculations increase the amount of both time and expertise required to accurately calculate each claim’s recognized loss amount. An incorrect calculation can lead to claims not being filed and will lessen the ability to review and challenge an administrator’s determination, if needed.

### Namaste Technologies, Inc. Security Litigation (Two Cases)

(CV-17584809-00CP (CA); 118-CV-10830 (U.S.))

**SETTLEMENT AMOUNT:** COMBINED: $4,900,000 USD ($2,150,000 million CA; $2,750,000 U.S.)

**SUMMARY:** There were two separate actions taken against Namaste Technologies, Inc., a Canadian cannabis e-commerce company. As is often the case when Canadian domiciled companies litigate shareholder lawsuits, there was a related sister case in the U.S. which also settled in 2020. The principal allegations for each case involve similar allegations regarding misstatements and omissions about divestiture of Namaste’s U.S. operations in December 2017.

**ADMINISTRATIVE COMPLICATIONS AND IMPACT:** One complication of the Canadian Namaste action is something we’ve seen trending in other Canadian securities class actions—that is, the judicial requirement that each claimant include with their claim form complete loss calculations. In this instance, we’re talking about a nineteen-step calculation—this means that a class member must have a full understanding of the Plan of Allocation before submitting their claim. Failure to do so, and do so correctly, could result in a reduced payment or rejected claim. Moreover, eligible securities are deemed to be sold in the opposite order that they were purchased, which is not typical in most securities matters. Given that class members are responsible for calculating their own claims, this can cause issues in determining the true last in and first out transactions. Further, it is our experience that filers and even claims administrators do not apply LIFO matching consistently, so additional care is needed.

**ENDOWRE RESOURCES, INC. SECURITIES LITIGATION** (Count File 02-CV-24157TCP)

**SETTLEMENT AMOUNT:** $1,285,000 CAD

**SUMMARY:** This case involves Aspen’s take-over bid circular and offer to purchase Endowre Securities. Plaintiffs allege that throughout the take-over process, defendants made material misrepresentations and omissions and it has been ongoing for over a decade. Between 2010 when the case was first certified and 2020 when the case was scheduled for trial, there were three settlements with various officer defendants, their counsel, and auditors. The settlement agreement was filed on August 8, 2019.

**ADMINISTRATIVE COMPLICATIONS AND IMPACT:** Significantly, this case involved a Corporate Action—shares exchanged in a take-over. The Distribution Protocol provides that any claimant who establishes that they were a class member will receive a share of the net settlement fund based on the number of Endowre securities they tendered into the take-over and if they sold the Aspen common shares received in the take-over at a loss or held those Aspen common shares at the time Aspen common shares were delisted from the TSX, they may claim a greater percentage of the net settlement fund. Due to the inconsistent nature of transactional records associated with shares acquired pursuant to a take-over, separate reviews must be performed to ensure that any shares exchanged are properly categorized according to the case requirements. Failure to adequately identify shares acquired via a take-over can lead to being found ineligible or of lower value. This is further complicated by the fact that all eligible transactions occurred nearly two decades ago on an international exchange.
HONORABLE MENTIONS

federal and state laws and regulations dating back as far as the 1980s that were either ignored or otherwise transacted in Euroyen-based derivatives.

The principal allegations in the case concern the company’s “labor strategy” of intentional mispricing of securitization to independent third-party distributors as independent contractors, which ultimately led to several class action complaints under the Fair Labor Standards Act and the Employee Retirement Income Security Act.

The principal allegations in the case concern the company’s “labor strategy” of intentional mispricing of securitization to independent third-party distributors as independent contractors, which ultimately led to several class action complaints under the Fair Labor Standards Act and the Employee Retirement Income Security Act.
Broadridge Financial Solutions, Inc. ("Broadridge" or the "Company"), part of the S&P 500® Index ("S&P"), is a global financial technology leader providing investor communications and technology-driven solutions to banks, broker-dealers, asset and wealth managers and corporate issuers. With over 50 years of experience, including over 12 years as an independent public company, we provide financial services firms with advanced, dependable, scalable and cost-effective integrated solutions and an important infrastructure that powers the financial services industry. Our solutions enable better financial lives by powering investing, governance and communications, and help reduce the need for our clients to make significant capital investments in operations infrastructure, thereby allowing them to increase their focus on core business activities.

Broadridge’s team of dedicated class action experts includes attorneys, client advocates, class action auditors, data analysts, research professionals and client service representatives, all of whom on average have 15-20 years of class action experience. Over 600 organizations rely on Broadridge’s global class action services because of our worldwide reach, industry expertise and world-class standards. Our experts analyze and match all investment positions to identify recovery opportunities for each security relevant to every case. Broadridge’s proprietary technology and processes—the backbone of which is our Advocacy Model—enable you to reduce risk, improve the client experience, protect customer data, and increase filing participation. Given our extensive knowledge of claims administration, global securities litigation and antitrust litigation, we know the importance of accuracy, timeliness and transparency. Our proactive approach and unique system of analysis and reconciliation ensures we do everything possible to maximize your recovery.

FOR MORE THAN A DECADE, BROADRIDGE HAS BEEN ACTIVE IN SUPPORTING THE FINANCIAL SERVICES INDUSTRY WITH REGARDS TO ITS CLASS ACTION NEEDS.

Broadridge is a global FinTech leader that supports institutions, broker-dealers, trust banks, fund manager, pension funds and other asset managers in the global class action market via its experienced team of career class action industry veterans including attorneys, auditors, data scientists and technologists. As a result, we have a truly unique perspective on the class action market.

TO DISCUSS THIS REPORT OR FOR MORE INFORMATION, PLEASE CONTACT US AT +1 855 252 3822

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