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Bulletin

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IndyMac and *Omnicare*: The Supreme Court Wades Deeper Into Securities Law

Benjamin J. de Groot, Esquire and Andrew N. Dodemaide, Esquire

This spring, the Supreme Court of the United States has added another pair of securities law cases to its docket. By granting petitions for certiorari in *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, No. 13-435 ("*Omnicare*") and *Police & Fire Retirement System v. IndyMac MBS, Inc.*, No. 13-640 ("*IndyMac*"), the Court has signaled its continuing interest in shaping class action securities litigation. This term, the Court is already considering a case — *Halliburton Co. v. Erica P. John Fund, Inc.*, No. 13-317 — that could alter how reliance on a defendant's misstatements can be pled in securities class actions and how the fraud-on-the-market doctrine can be used to establish class-wide

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The Ninth Annual Rights and Responsibilities of International Investors Conference: A Recap

Emily N. Christiansen, Esquire

On March 7, 2014, Delegates from Western Europe, Canada, and the United States Gathered in Amsterdam, The Netherlands to Discuss and Debate Topics Related to the Theme of *Surpassing Expectations: Closing the Gap Between Rules and Reality in Shareholder Engagement.*

This one-day event, hosted by Kessler Topaz Meltzer & Check, LLP and Institutional Investor featured a stimulating day of panels, case studies, and workshops and featured a closing keynote address by the former President of the United States, Bill Clinton. Executives, legal counsel, investment officers, asset managers, and compliance and governance officers, representing institutional investors of various sizes, gathered together to discuss some of the most pressing issues affecting institutional investors, including shareholder engagement, navigating rules and regulations, integrating ESG into the investment process, and developments in the realm of shareholder litigation.

The conference began with a panel discussion entitled "Defining & Quantifying the Impact of Active Engagement." Moderator Martine Menko, Investment Officer at Pensioenfonds Vervoer and panelists Anna Hyrske, Head of Responsible Investments at Ilmarinen, Alex van der Veden, Partner and Chief Invest-

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U.S. Supreme Court to Hear ERISA Case of First Impression

Peter Muhic, Esquire and Shannon Braden, Esquire

On April 2, 2014, the Supreme Court of the United States will hear oral argument in a case with the potential to change the landscape of ERISA company stock cases. The case — *Fifth Third Bancorp, et al. v. Dudenhoeffer, et al.*, No. 12-751 — raises issues of first impression for the Supreme Court and should serve to clarify what a plaintiff must plead in order to sufficiently state a claim for breach of the ERISA fiduciary duties of loyalty and prudence.

This case arises from plaintiffs' claim that defendant Fifth Third Bancorp and certain individual defendants breached their fiduciary duties to act prudently and loyally under Section 404(a)(1) of the Employee Retirement Income Security Act of 1974. The complaint alleges that defendants, fiduciaries of a defined-contribution ERISA Plan that held employer stock, knew or should have known that continued investment in employer stock was imprudent because Fifth Third had abandoned its traditionally conservative lending practices to lend in the subprime market — a far more risky venture due to the high potential for defaults — and that defendants breached their fiduciary duties by failing to either restrict further investment in employer stock, divest the stock already owned or disclose this increased risk.

The district court dismissed the complaint. In so doing, it applied what has been referred to as the "*Moench* presumption," or in the Sixth Circuit, the "*Kuper* presumption," under which "the plan fiduciaries start with a presumption that their 'decision to remain invested in employer securities was reasonable.'" *Kuper v. Iovenko*, 66 F.3d 1447 (6th Cir. 1995); *see Moench v. Robertson*, 62 F.3d 553 (3d Cir. 1995). Applying this so-called presumption of prudence, the district court found that the complaint did not allege that Fifth Third Bancorp was in a dire financial predicament sufficient to establish a breach of fiduciary duty.

A unanimous panel of the Sixth Circuit court of appeals reversed, holding that no special presumption need be applied in analyzing the complaint because it would necessarily concern questions of fact at the pleadings stage when a court must

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In the Community

back on my feet

Team KTMC runners stand in front of the Philadelphia Art Museum

Back row: Matt Goldstein, Steve McLain, Fabiana Angrisano, Kate Marshall, Chris Smith, Mark Gyandoh, Lee Rudy, Quinn Kerrigan. Front row: Cassandra Masel, Emily Christiansen, Caryn Rudy, Jessica Halpern. Missing from photo: Courtney Tafaro, Kim Dieter, Karyn Dieter Heym, Meredith Lambert.

Kessler Topaz has been a supporter of Back on My Feet since 2009. Founded in Philadelphia, Back on My Feet uses running to help those experiencing homelessness change the way they see themselves so they can make real change that results in employment and independent living. Since its founding in Philadelphia, the organization now has chapters in 11 cities and is still growing, and has helped thousands of homeless people by introducing them to running. In March of 2014, Kessler Topaz's team sponsored and participated in a 5-mile Back on My Feet road race, which started and ended at Philadelphia's Art Museum.

The Fifth Annual Evolving Fiduciary Obligations of Pension Plans Seminar: A Recap

Jonathan R. Davidson, Esquire

On February 18th, Delegates from Across the United States and Canada Gathered in Washington, D.C. to Examine and Debate Current Issues Affecting Institutional Investors.

The Honorable Barney Frank, former United States Congressman from Massachusetts, drew applause as he discussed his well-documented work in Congress, as well as insight into the crafting of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. His appearance was the climax of the Evolving Fiduciary Obligations of Pension Plans Seminar, the theme of which was, "Honing Active Engagement Through Strategic Action."

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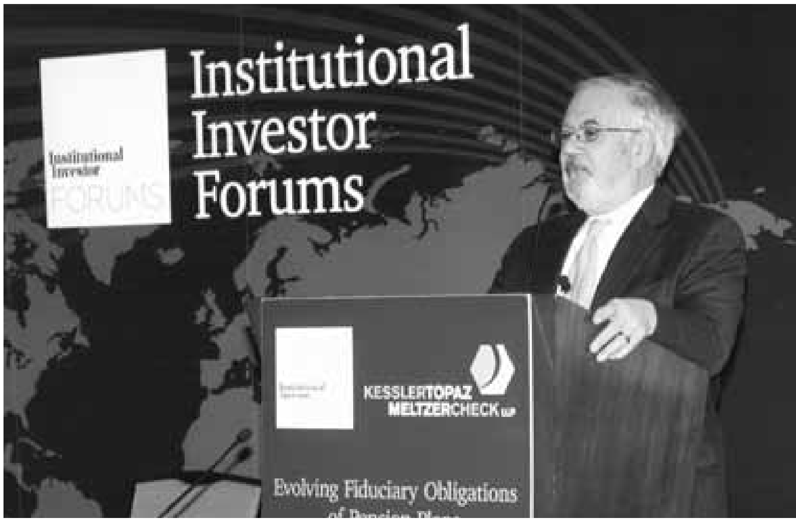

The Honorable Barney Frank addresses the Delegates at EFOPP 2014

U.S. Supreme Court Clarifies Scope of SLUSA's Preclusion Provision in *Chadbourne & Parke LLP v. Troice*

Meredith L. Lambert, Esquire

On February 26, 2014, the United States Supreme Court issued a decision in *Chadbourne & Parke LLP v. Troice*, 571 U.S. __ (2014). In a 7-2 opinion authored by Justice Breyer, the Court affirmed the Fifth Circuit Court of Appeal's ruling that the four state-law class actions arising from Allen Stanford's multibillion dollar Ponzi scheme were not subject to the "preclusion provision" of the Securities Litigation Uniform Standard Act ("SLUSA"), which bars plaintiffs from bringing securities class actions that allege claims under state or common law based upon fraud "in connection with" the purchase or sale of "covered securities," *i.e.*, securities traded on national exchanges. In reaching this holding, the Court clarified the meaning of SLUSA's "in connection with" language — a phrase that had been inconsistently interpreted by appellate courts.

Factual Background

Stanford's Ponzi scheme involved the sale of approximately \$7 billion in certificates of deposit (CDs) issued by Stanford International Bank ("SIB") to more than 25,000 people over fifteen years. SIB falsely represented that the CDs were backed by liquid investments. In reality, however, SIB used a portion of the proceeds from the CD sales to cover interest payments and redemptions, while Stanford spent the remainder on personal luxuries and speculative ventures.

Upon discovery of the fraud and collapse of the scheme, the United States Government, through the Department of Justice and the Securities and Exchange Commission ("SEC"), brought successful enforcement actions against Stanford and his associates under Section 10(b) and Rule 10b-5 of the Exchange Act, which prohibit fraud "in connection with the purchase or sale of *any* security," not just "covered securities."

The plaintiffs in *Chadbourne* — private purchasers of the CDs — likewise sought recovery for the devastating losses that they suffered from certain third-party defendants, including investment advisers, law firms, and insurance brokers, for helping to perpetrate the fraud or concealing the scheme from regulators. However, under the Supreme Court's prior decisions in *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2008) and *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994), Section 10(b) does not create a private right of action against such "secondary actors" or "aiders and abettors" of securities fraud. Accordingly, the plaintiffs asserted their claims under state law.

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Puerto Rican Bond Saga Leaves UBS Customers Shaken

Andrew N. Dodemaide, Esquire

Kessler Topaz Meltzer & Check, LLP is currently investigating claims against UBS Financial Services Inc. of Puerto Rico ("UBS PR") — a subsidiary of the Swiss financial giant, UBS AG — and related entities for losses suffered by investors purchasing shares of UBS PR's proprietary non-exchange-traded closed-end funds ("CEFs").

The CEFs consist primarily of Puerto Rican bonds that produce tax-free interest income to Puerto Rican residents if certain requirements are met. By way of background, UBS Trust Company of Puerto Rico ("UBS Trust") serves as the asset manager and administrator of the CEFs, while UBS PR is the broker-dealer for trading CEF shares. UBS PR marketed the CEFs in Puerto Rico. The CEFs have lost significant value in recent years and have become the subject of, *inter alia*, enforcement action by the Securities and Exchange Commission ("SEC"). According to published reports, investors' losses could have been driven by UBS's role as underwriter and market-maker for certain Puerto Rico debt offerings.

For instance, in 2008, UBS PR underwrote a number of bond offerings made by a Puerto Rican government entity while serving as that entity's financial advisor. The bonds were of a low quality — rated just above junk level — yet UBS Trust purchased many of these bonds for the CEFs. As reported by *Bloomberg News*, certain legal experts have characterized UBS Trust and UBS PR's joint efforts as "a blatant series of conflicts of interest" that are "designed to put money in UBS's pocket at the expense of its clients."

Additionally, according to the SEC, throughout 2008 and 2009 UBS PR falsely represented to investors that CEF share prices were the result of market forces such as supply and demand, even though CEF share prices were set solely at the discretion of UBS PR's trading desk and UBS PR was artificially supporting the secondary market in CEF shares by maintaining a very large CEF inventory. In fact, as the SEC has alleged, in mid-2008 a significant supply and demand imbalance developed in the secondary market for CEFs as investors placed sell orders in increasing numbers. Rather than reducing the price of CEF shares, UBS PR allegedly addressed the imbalance by increasing its CEF inventory from $37 million to $50 million by late 2008. At the same time, UBS PR is alleged to have generated investor demand in the CEFs by promoting their high returns and low risk and volatility, but failed to disclose to investors that CEF share prices and liquidity were increasingly dependent upon UBS PR's support of the CEF secondary market.

As further set forth in SEC documents, UBS PR took notice of the persistent "product fatigue" causing the weak demand in the secondary market. In early 2009, UBS PR's parent company determined that UBS PR's CEF holdings posed too great a financial risk, and instructed it to reduce its CEF inventory. The SEC has alleged that in order to effect this reduction, UBS PR implemented a plan called "Operation: Soft Landing," in which UBS PR systematically sold its CEF shares at prices marginally lower than pending customer sell orders, rendering the customer sell orders unmarketable. At the same time, UBS PR increased its efforts to solicit new customers without disclosing the lack of market liquidity or how secondary market prices were being set. As a result of its sell-off of CEF shares, UBS PR sold 75% of its CEF holdings over six months while the price of certain CEFs fell by 10% to 15%.

Multiple actions have been filed against UBS PR and related entities alleging financial harm as a result of the various aspects of the CEF scheme. On May 1, 2012, the SEC charged UBS PR and two UBS PR executives with making misrepresentations and omissions of material facts to retail customers regarding the secondary market liquidity and pricing of the CEFs in violation of United States securities laws. Without admitting or denying the claims, UBS PR agreed on the same day to pay a total of $26.6 million to settle the SEC's action. The two executives, however, challenged the SEC's claims, and on October 29, 2013 the SEC action against them was dismissed.

Kessler Topaz Meltzer & Check, LLP is continuing to investigate potential claims relating to UBS's involvement in CEFs. The firm held an educational seminar in Puerto Rico with two other firms to discuss UBS's role in selling CEFs. The seminar was attended by more than 400 people.

Kessler Topaz Partner Naumon Amjed speaks to a group of Puerto Rican investors in San Juan.

Ontario Courts Appear Willing to Assert Jurisdiction in Securities Class Actions Even When the Securities Were Not Purchased on a Canadian Exchange

Emily N. Christiansen, Esquire

While the U.S. Supreme Court, in its 2010 decision *Morrison v. National Australian Bank*, limited U.S. courts' jurisdiction in securities class actions to only those claims arising from securities purchased on a U.S. market, courts in Ontario, Canada appear to be willing to assert jurisdiction even when the securities were not purchased on a Canadian exchange and the alleged fraud did not occur in Canada. The Superior Court of Justice in Ontario recently issued an interesting opinion regarding securities class actions in which it determined that the court has jurisdiction over claims stemming from shares purchased on a foreign stock exchange. In *Kaynes v. BP, plc*, the Ontario determined that a claim for secondary market misrepresentation under the *Ontario Securities Act* is a "statutory tort" over which the court can assert jurisdiction even when the shares were purchased on a non-Canadian exchange and the company is not headquartered or doing business in Canada.

Mr. Kaynes proposed a class action against BP on behalf of Canadian residents who purchased BP shares between May 9, 2007 and May 29, 2010 and the proposed class included those who purchased both common shares and American Depository Shares ("ADS"), regardless of whether the purchase occurred on a Canadian or non-Canadian exchange. Kaynes alleged that BP made various misrepresentations in its investor documents before and after the Deepwater Horizon oil spill in the Gulf of Mexico in April 2010. Prior to the motion for class certification, BP brought a motion seeking an order to stay the proceeding on the basis that the court did not have jurisdiction over the dispute. BP conceded that the court would have jurisdiction over individuals who purchased BP shares on the Toronto Stock Exchange, but challenged the court's jurisdiction over claims by individuals who purchased their shares on non-Canadian exchanges.

In Ontario, in order for the court to assert jurisdiction, it must determine there is a "real and substantial connection" between the province and the claim. Generally, the court will determine it has jurisdiction in the following instances: (1) when the defendant is domiciled or resident in the jurisdiction; (2) when the defendant carries on business in the jurisdiction; (3) when the tort was committed in Ontario; or (4) when a contract connected with the dispute was made in Ontario. In addition, the Ontario courts will also assert jurisdiction when there is a statutory tort that is not technically a tort committed in Ontario.

In support of its motion to stay the proceedings, BP argued that it was not a resident of Ontario, it did not carry on business in Ontario, and the claim did not relate to a contract that was created in Ontario. BP is a company incorporated under the laws of the U.K. with principal offices in London, England. BP does not own any real or personal property in Canada, nor does it have offices or employ anybody in Canada. BP's common shares are listed on the London Stock Exchange and the Frankfurt Stock Exchange and the ADS are listed on the New York Stock Exchange. BP had, up until August 2008, listed the ADS on the Toronto Stock Exchange but it voluntarily de-listed them. The plaintiff, Mr. Kaynes, although a resident of Ontario, Canada, purchased all of his ADS on the New York Stock Exchange.

BP also argued that the "statutory tort" should be deemed to arise based on the exchange where the security is purchased. It argued that its position was in line with the U.S. Supreme Court's decisions in *Morrison v. National Australia Bank*. BP noted that the U.S. Supreme Court held that the statutory cause of action under the *Securities Exchange Act of 1934* applies only to the purchase or sale of a security in the U.S. and it argued that a careful application of the laws in Canada would lead to the same "exchange-based" result that is now applied in the U.S.

The Ontario Superior Court rejected BP's arguments because it determined that there was no wording in the *Ontario Securities Act* that restricts the cause of action to investors who purchased their shares on the Ontario exchange and the court was unwilling to "impos[e] a limitation in the Act where none exists." The court went on to note that the *Ontario Securities Act* contains a provision which relieves the investor from having to prove reliance and the investor is simply deemed to have relied upon a misrepresentation. The court further noted that in a common law claim of negligent misrepresentation in Canada, the place of the tort is the place where the misrepresentation is received and relied upon. The court therefore reasoned that because the Ontario Securities Act deems an Ontario investor to have relied upon the misrepresentation when he

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IndyMac and *Omnicare*: The Supreme Court Wades Deeper Into Securities Law

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reliance on misstatements. The addition of these two cases for next term leaves no doubt that the Court is interested in this important area of law. The cases present substantive and procedural questions for which lower courts have failed to find a consensus, and the outcomes of these cases will affect critical litigation decisions for investors.

Omnicare: It may be false, but did you know it was false? On March 3, 2014, the Supreme Court accepted an appeal in *Omnicare* from the Court of Appeals for the Sixth Circuit concerning whether, for purposes of a claim under Section 11 of the Securities Act of 1933 (the "Securities Act"), it is sufficient for a plaintiff to allege only that a statement of opinion contained in a company's registration statement was objectively false, or whether a plaintiff must also allege that the speaker of the statement held an opinion that was different than the one expressed.

Omnicare is the nation's largest provider of pharmaceutical care services for residents of long-term care facilities in the United States and Canada. At issue in the *Omnicare* litigation are allegations that Omnicare's offering documents in connection with its December 15, 2005 stock offering falsely stated that its arrangements with the pharmaceutical companies were "legally and economically valid." Investors alleged in their complaint that Omnicare was engaged in various illegal activities, revealed in allegations in a whistleblower complaint, including kickback arrangements with pharmaceutical companies and the submission of false Medicare and Medicaid claims. The investors did not allege, however, that the company knew its arrangements were illegal. As a result, the district court dismissed the investors' Section 11 claim. *See Indiana State Dist. Council of Laborers & HOD Carriers Pension Fund v. Omnicare, Inc.*, No. 2006-26, 2012 U.S. Dist. LEXIS 17526 (E.D. Ky. Feb. 13, 2012).

Like the district court, both the Second Circuit and the Ninth Circuit courts of appeals have previously concluded that statements of opinion in registration statements must not only be false, but also known to be false, in order for investors to adequately plead a claim under Section 11 of the Securities Act. *See Fait v. Regions Financial Corp.*, 655 F.3d 105, 110 (2d Cir. 2011) (concluding that "when a plaintiff asserts a claim under section 11 . . . based upon a belief or opinion alleged to have been communicated by a defendant, liability lies only to the extent that the statement was both objectively false and disbelieved by the defendant at the time it was expressed"); *Rubke v. Capitol Bancorp Ltd.,* 551 F.3d 1156, 1162 (9th Cir. 2009) (holding that opinions can "give rise to a claim under section 11 only if the complaint alleges with particularity that the statements were both objectively and subjectively false or misleading").

In reaching their holdings, both the Second Circuit and the Ninth Circuit relied on the Supreme Court's 1991 opinion in *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083 (1991), holding that, in claims brought under Section 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), plaintiffs must allege more than belief of falsity alone. In *Omnicare*, the Sixth Circuit explicitly rejected the Second and Ninth Circuits' interpretation of *Virginia Bankshares* and held that "[u]nder Section 11, if the defendant discloses information that includes a material misstatement, that is sufficient and a complaint may survive a motion to dismiss without pleading knowledge of falsity." 719 F.3d at 505. The Sixth Circuit reasoned that Section 11 imposes strict liability for material misrepresentations in offering documents, and thus the plaintiffs did not need to plead knowledge of falsity. The Sixth Circuit explained that "[n]o matter the framing, once a false statement has been made, a defendant's knowledge is not relevant to a strict liability claim." *Id.*

Thus, *Omnicare* presents the Supreme Court with an opportunity to answer a question that has been making its way through the lower courts since the Court's 1991 opinion in *Virginia Bankshares*. As with any case, it is difficult to predict how the Supreme Court may rule; however, Justice Antonin Scalia's concurring opinion in *Virginia Bankshares*, in which he stated that both subjective and objective falsity were required for liability, suggests that at least one member of the Court may be inclined to overrule the Sixth Circuit's approach in *Omnicare*.

IndyMac: How limited are limitations periods? Just a few days after the Supreme Court accepted the *Omnicare* case, it granted certiorari in *IndyMac* on March 10, 2014. In *IndyMac*, the Second Circuit Court of Appeals altered the application of tolling rules in that circuit by holding that the Securities Act's repose period could not be tolled during the pendency of a class action. *See Police & Fire Retirement System v. IndyMac MBS, Inc.*, 721 F.3d 95 (2d Cir. 2013). That development was of pressing concern to investors because courts in the Second Circuit, where a great number of securities class actions are resolved, commonly tolled (or suspended) statutes of limitations and statutes of repose under the Exchange Act and the Securities Act until a ruling on class certification was issued. Such tolling afforded potential litigants more time to evaluate their claims and consider whether to file their own individual actions separately from the pending class action. *IndyMac* conflicts with authority from the Tenth Circuit which holds that the Securities Act's statute of repose tolls while a class action is pending. *See Joseph v. Wiles,* 223 F.3d 1155, 1168 (10th Cir. 2000).

Unlike statutes of limitations, which disallow lawsuits brought a certain amount of time after wrongdoing is discovered or should have been discovered, statutes of repose prevent any suit from being brought over a wrongful act after a certain amount of time has elapsed, regardless of whether or not anyone harmed by the wrongdoing knows a claim could be brought. The repose period thus prohibits claims even where defendants successfully conceal their misconduct. Despite this, courts commonly tolled (or suspended) statutes of repose until a ruling on class certification was issued, relying on the reasoning supporting the Supreme Court's 1974 decision in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), holding that statutes of limitations could be tolled during the pendency of a class action. *See, e.g., Joseph*, 223 F.3d at 1168 (explaining that "in a sense, application of the *American Pipe* tolling doctrine to cases such as this one [involving the statute of repose] does not involve 'tolling' at all"); *In re Morgan Stanley Mortg. Pass-Through Certificates Litig.*, 810 F. Supp. 2d 650, 668 (S.D.N.Y. 2011) (concluding that because the *American Pipe* rule was "consistent with the Rule 23 goals of efficiency and judicial economy," it would appropriately toll the Securities Act's statute of repose).

As a result of this application of the *American Pipe* rule, investors whose claims were covered by a putative class action could assess the merits of bringing individual actions and wait until a class certification ruling was issued before determining whether to pursue an individual action or to remain passive class members. Even if class certification was denied, the investors would be allowed to file individual actions to vindicate their rights. The Second Circuit's opinion in *IndyMac* takes away the "wait and see" approach and may increase the number of cases filed against companies accused of securities law violations, if for no other reason than to preserve investors' rights.

With a clear split of authority between the Second and Tenth Circuits, the issue is now squarely before the Supreme Court. Once again, predicting how the Court will rule is difficult, but if the Court affirms the Second Circuit's conclusions, *IndyMac* will fundamentally alter investors' litigation strategies as the shortened window to file an individual action may prevent institutional investors, in particular, from having the benefit of a court's analysis of the claims when deciding whether to pursue litigation. Investors and their counsel will therefore need to be more proactive in assessing whether an individual action would be favorable over passive membership in a class.

However the Court ultimately answers the questions before it in *Omnicare* and *IndyMac*, these cases will likely have a lasting effect on both substantive pleadings and litigation strategies for investors in securities class actions.

U.S. Supreme Court Clarifies Scope of SLUSA's Preclusion Provision in *Chadbourne & Parke LLP v. Troice* *(continued from page 3)*

Proceedings Below

The Northern District of Texas dismissed the plaintiffs' claims at the pleading stage in all four cases, concluding that SLUSA's preclusion provision applied because, although the CDs were not "covered securities," the alleged fraud involved misrepresentations that the uncovered CDs were backed by SIB's ownership of nationally-traded securities. On appeal, the Fifth Circuit reversed the District Court's decision, finding that such misrepresentations regarding SIB's holdings in covered securities did not trigger SLUSA because they were not "more than tangentially related" to the "heart, crux, and gravamen" of the alleged fraud, which was the misrepresentation that the uncovered CDs "were 'a safe and secure' investment that was preferable other investments for many reasons." Thereafter, the defendants filed petitions for *certiorari*, which the Supreme Court granted.

Majority Opinion

Upholding the Fifth Circuit's ruling, the Supreme Court concluded that the scope of SLUSA's preclusion provision "does not extend further than misrepresentations that are material to the decision by one or more individuals (other than the fraudster) to purchase or sell a covered security." The Court cited several factors in support of this finding. *First*, the Court observed that this interpretation is consistent with SLUSA's application to "covered securities." *Second*, the Court reasoned that SLUSA's use of the phrase, "material fact in connection with the purchase or sale," suggests that the connection must matter. That is, the alleged fraud should significantly impact the decision of someone besides the individual perpetrating the fraud to purchase or sell a covered security, not an uncovered one. *Third*, the Court acknowledged that

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U.S. Supreme Court Clarifies Scope of SLUSA's Preclusion Provision in *Chadbourne & Parke LLP v. Troice* *(continued from page 7)*

its decisions interpreting the "in connection with" language under both SLUSA and the Exchange Act have "involved victims who took, who tried to take, who divested themselves of, who tried to divest themselves of, or who maintained *an ownership interest* in financial instruments that fall within the relevant statutory definition." *Fourth*, the Court noted that its interpretation is consistent with both the Exchange Act and the Securities Act of 1933, as "[n]othing in [those] statutes suggests their object is to protect persons whose connection with statutorily defined securities is more remote than words such as 'buy,' 'sell' and the like, indicate." And *fifth*, the Court indicated that a broader interpretation of the "in connection with" requirement would impinge upon state efforts to protect against ordinary state-law frauds.

The Court then addressed two counterarguments raised by the defendants and the Government. *First*, with regard to the defendants' contention that the Court has consistently read the "in connection with" language broadly, the Court explained that this reading applied to cases where, unlike the alleged fraud at issue, the false statement was "material" to another individual's decision to "purchase or sell" a statutorily defined "security" or "covered security." *Second*, as to the Government's argument that a narrow interpretation of SLUSA's preclusion provision would additionally limit the scope of the SEC's enforcement powers under Section 10(b), which uses the identical "in connection with" language, the Court pointed out that the SEC had already brought a successful enforcement action against Stanford and SIB, as the Government's authority under Section 10(b) applies more broadly to "a wide range of financial products beyond those traded on national exchanges," including the CDs sold by SIB.

Applying its holding to the complaints in each of the four class actions, the Court determined that, at most, they alleged misrepresentations regarding the ownership of covered securities by "the fraudster, not the fraudster's victim." Thus, the Court concluded that "there is not the necessary 'connection' between the materiality of the misstatements and the statutorily required 'purchase or sale of a covered security.'"

As a final point, the Court rejected the District Court's additional finding that SLUSA's preclusion provision applied because at least one of the plaintiffs had purchased the CDs by using the proceeds from the sale of covered securities contained in an investment retirement account ("IRA") portfolio. Rather, the Court agreed with the Fifth Circuit's determination that "these sales constituted no relevant part of the fraud but rather were incidental to it."

Concurrence

In light of his disagreement with the notion that the statutory phrase "in connection with" is subject to a "broad interpretation," Justice Thomas authored a concise concurring opinion commending the majority's application of "a limiting principle to the phrase 'in connection with' that is consistent with the statutory framework and design of" SLUSA.

Dissent

Writing for the dissent, Justice Kennedy, joined by Justice Alito, expressed concern that the Court's "narrow interpretation" of SLUSA's language would limit the SEC's enforcement powers under Section 10(b) and subject secondary actors to increased state-law claims. Accordingly, the dissent urged a broader reading of the "in connection with" requirement consistent with the Court's precedents instructing that "[t]he key question is whether the misrepresentation coincides with the purchase or sale of a covered security or the purchase or sale of the securities is what enables the fraud." Under this standard, the dissent found it irrelevant that Stanford and SIB, as opposed to the fraud victims, held an ownership interest in the covered securities, noting that "[t]he very essence of the fraud was to induce purchase of the CDs on the (false) promise that investors should rely on SIB's special skills and expertise in making market investments in covered securities on their behalf."

Implications of *Chadbourne*

Chadbourne not only resolves a Circuit split regarding the scope of SLUSA's preclusion provision but also marks a significant victory for the plaintiffs' bar by permitting defrauded investors otherwise foreclosed from seeking redress under the federal securities laws to bring state-law aiding and abetting claims against secondary actors where the alleged fraud involves the purchase or sale of uncovered securities. While the decision raises some concerns that the Court's narrowed interpretation of SLUSA's "in connection with" language will apply with equal force to Section 10(b) and will subject third-party advisers to increased liability under state law, the majority opinion makes clear that such concerns are unfounded, as the Court's holding is limited to state-law class actions involving only uncovered securities. As such, the SEC's enforcement powers remain undisturbed, while SLUSA still precludes plaintiffs from bringing state-law class actions against secondary actors based upon their indirect participation in the transaction of securities traded on national exchanges.

The Fifth Annual Evolving Fiduciary Obligations of Pension Plans Seminar: A Recap

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The seminar was hosted by Kessler Topaz Meltzer & Check, LLP and Institutional Investor.

For the fifth consecutive year, top-level executives, legal counsel, compliance and corporate governance officers, from public pension funds and Taft-Hartley funds, as well as other legal and financial service providers from across the United States and Canada, participated in a lively discussion of current shareholder issues. With attendees representing funds of all sizes, from small municipal plans to the likes of CalSTRS and the North Carolina Department of the State Treasury, there was engaging dialogue concerning the pressing issues facing public pension funds and institutional investors generally, as well as on the ever-increasing role that institutional investors are playing with regard to corporate engagement. Some highlights of the EFOPP Seminar were as follows:

The day began by looking at the recent municipal bankruptcies in Stockton and Detroit. Panelists representing U.S. pension funds of varying size, including Chelsa Wagner, Controller for Allegheny County in Western Pennsylvania, Victoria Hale, General Counsel for the Denver Employees Retirement Plan, Linsey Schoemehl, General Counsel and Chief Compliance Officer for the Illinois State Board of Investment, along with Leigh Snell, the Direct of Federal Relations for the National Council of Teacher Retirement, tackled several collateral issues that have surfaced such as the impact these bankruptcies had (and will continue to have) on the public pension industry as a whole, plan modifications to prevent future underfunding issues, as well as the difficult task of dealing with outside political influences. It was interesting to see how the panelists, in working for their respective plans, are dealing with these significant and complex issues.

Another panel session followed, this one addressing how institutional investors approach active engagement and Socially Responsible Investment (SRI). Again, representatives from public pension funds of all sizes, including Jay Chaudhuri, General Counsel & Senior Policy Advisor for the North Carolina Department of State Treasury, Jeffrey Padwa, City Solicitor for the Providence Board of Investment Commissioners, and Elaine Reagan, General Counsel for the San Diego City Employees' Retirement System, helped illustrate how size and human/financial resource constraints dictate just how prominent a role active engagement and SRI matters will play for a particular fund. Panelists discussed how their respective funds handle issues such as proxy voting, securities litigation, amicus briefs, sign on letters and responsible investing. While U.S. institutional investors still lag behind many of their international colleagues on these matters, it is clear that U.S. funds of all sizes are working to close the gap.

The EFOPP Seminar then broke into two sets of concurrent workshops, where delegates had the opportunity to choose between sessions addressing: 1) resources and active engagement — how to do more with less; 2) what drives plan investment decision-making; 3) how governance standards can be used to address the long term viability of plan investments; and 4) the effect of the economic crisis on public pension plans. The workshop segments have continued to be crowd-pleasers at EFOPP seminars, as delegates are able to engage in a free-flow of ideas with their colleagues, learn what is and what is not working, and often take an idea or two away which they can bring back home and implement at their respective fund.

After lunch, R. Paul Edmonds, Senior Vice President, Corporate Affairs and General Counsel for the Ontario Pension Board, gave a presentation on how his fund, along with several others in Canada, has begun the process of introducing risk-sharing into their pension funds. In addition to their dedication to complete transparency of operations, the Board has demonstrated (amid intense public scrutiny despite strong funding levels) a commitment to increase participants' shared-risk responsibilities. As Mr. Edmonds explained, his fund is in the process of reorienting its liability structure to hopefully benefit both the system and its participants. It will be interesting to see if such a structural change could ever take hold in the United States with regard to defined benefit plans.

Kessler Topaz partner Andrew Zivitz next led the EFOPP delegates through a case study relating to the proprietary trading activities of JPMorgan Chase & Co's Chief Investment Office — activities which ultimately led to over $6 billion in losses to the Company as a result of massive bets placed on exotic credit derivatives by the so-called "London Whale" — a trader in the Chief Investment Office. Mr. Zivitz, with the assistance of engaging video accompaniment, explored how the losses occurred, the fallout to JPMorgan, and provided an update of the securities class action now pending in the United States District Court for the Southern District of New York.

Fiduciary duty has historically been a major theme at EFOPP seminars. This year, Ed Waitzer, a partner at Stikeman Elliott LLP, gave a case study on the expanding scope

(continued on page 12)

The Ninth Annual Rights and Responsibilities of International Investors Conference: A Recap *(continued from page 1)*

ment Officer at Ownership Capital, Matt Christensen, Head of Responsible Investment at AXA Investment Managers Ltd., and Keith L. Johnson, Chairman of Institutional Investor Services Group and attorney at Reinhart Boerner Van Deuren s.c. discussed the impact of engagement and highlighted the need for institutional investors to engage with each other in order to effect the most change in corporations. The panel also highlighted the need to tailor engagement strategies to the country and culture where a particular corporation is located and to make sure that institutional investor's voting and engagement strategies are in line.

Following the panel, Rogier Snijdewind, Advisor for Responsible Investment at PGGM Investments, conducted a case study on the "Intricacies of the Shareholder-Independent Board Member Relationship." Mr. Snijdewind discussed the lack of shareholder rights within some countries and companies and provided the example of Germany where shareholders do not have a say on pay and lack the ability to vote on CEOs. As an example, Mr. Snijdewind highlighted PGGM's action last spring in publicly contesting the position of the Chairman of the Board and a newly appointed CEO at German-based GSW after the non-executive supervisory board decided to appoint the CEO without consulting shareholders.

Andy Zivitz, a partner at Kessler Topaz Meltzer & Check, followed Mr. Snijdewind's case study presentation with a rousing case study of the "London Whale," the activities of a trader in JP Morgan Chase & Co.'s Chief Investment Office, which ultimately led to more than $6 billion in losses for JP Morgan. Mr. Zivitz's presentation highlighted the details of the risky trading activities, the aftermath of the crisis, and

Darren Check of Kessler Topaz conducts a Q&A with President Bill Clinton at the 2014 RRII in Amsterdam.

provided an update on the current securities class action pending before the Southern District of New York in the United States. Mr. Zivitz's presentation incorporated both analysis and video clips from various news sources and the movie *The Inside Job.*

After the morning panel and case studies, delegates separated and attended one of three workshops. Delegates were able to attend a workshop on either:

(1) "Influencing Responsible Investment Outcomes Through Firm-Wide Integration" — This workshop, led by Harald Walkate, Senior Vice-President and Head of Responsible Investment at AEGON Asset Management and Ebba Schmidt, Responsible Investment Manager for the UK Pension Protection Fund, focused on how funds might more generally impact investment outcomes by actions like identifying firm priorities and involving employees (not just specialists) in the responsible investment process.

(2) "Reconsidering the Tsunami of Regulation" — Workshop leaders Johan Sundin, Senior Legal Counsel for SEB Wealth Management and Uffe Berg, Corporate Lawyer at Industriens Pensionforsikring led a discussion on over regulation of the financial sector and the disconnect between real problem and the regulatory response. The workshop participants also discussed possible solutions for making the legislative process more focused and democratic in order to strengthen the regulatory impact.

(3) "EU Bonus Caps and the State of Executive Pay Practices" — Workshop leaders Anatoli van der Krans, Senior Advisor Responsible Investment & Governance at MN and Pila Pilv, partner at New Bridge Street, an Aon Hewitt Group, discussed the potential future impact of recent actions regarding executive pay practices including: actions within the EU including a bonus cap provision in CRD4, a proposed 20% pay curb in the Netherlands, and the Swiss referendum rejecting a proposed limit to executive pay.

After lunch, Stuart Berman, a partner at Kessler Topaz Meltzer & Check, LLP, and panelists Richard Gröttheim, Chief Executive Officer at AP7, Paul Edmonds, Senior Vice President of Corporate Affairs and General Counsel of the Ontario Pension Board, Keith Johnson, chairman of Institutional Investor Services Group Chairman and attorney at Reinhart Boerner Van Deuren s.c., and Anders Månsson, partner at Setterwalls, debated the impact of recent U.S. Supreme Court decisions on shareholder litigation. In "Are Courtroom Doors Closing to U.S. Investors? Erosions in Shareholder Rights and What Investors Can Do to Reverse the Trend," the panelists discussed how cases like *Morrison v. National Australia Bank* (which limited the ability to pursue a remedy in the U.S. to only those shareholders who purchased shares on a U.S. market) now requires funds to spend a large amount of time and resources in researching potential actions in non-U.S. jurisdictions.

Following the panel, three different case studies were presented. The first, "Integrating ESG Principles into the Governance Process: Examples in Private Equity" presented by Ludo Bammens, Director of European Corporate Affairs at KKR and Jan Erik Saugestad, Chief Investment Officer at Storebrand Asset Management, examined how ESG/SRI principles can be integrated into the governance process and how private equity can serve as a model for the larger investment universe. The second, "The Future for Institutional Investors and Responsible Investing" presented by Sasja Beslik, Head of Responsible Investment and Governance at Nordea Investment Funds, looked at the UN development goals for 2015 and explored what institutional investors and companies can do to strengthen governance models and responsible investment strategies in order to further those goals. The final case study, "The Next Generation in Board Diversity" presented by Matt Christense, Head of Responsible Investment at AXA Investment Managers Ltd., looked at research that demonstrates a link between greater board diversity and positive financial performance.

Former President Bill Clinton closed out the event with a keynote address on the greatest challenges in the world today. Clinton spoke of increasing global interdependence and the threat of inequality. Clinton discussed how more cooperation is needed to work to address problems. Clinton outlined some of the ways that institutional investors could play a role including looking to define performance not just by stock price but with consideration of a company's attention to corporate social responsibility. He also suggested that institutional investors look to invest in things like green energy in the Caribbean island nations because the investment would be profitable, lower energy costs for residents of those companies, and make the energy production more environmentally sustainable.

Following Clinton's keynote address, Kessler Topaz Meltzer & Check partner Darren Check joined Clinton on stage and engaged Clinton in a question and answer session in which Clinton discussed other important global issues including the impending crisis in the Ukraine.

According to the conference delegates, the Ninth Annual Rights and Responsibilities of Institutional Investors conference was a resounding success. We are looking forward to March 2015 when we will host another exciting day of discussion and debate on the issues affecting shareholders. We are currently in the process of planning next year's conference, which will once again be held in Amsterdam, The Netherlands.

Ontario Courts Appear Willing to Assert Jurisdiction in Securities Class Actions Even When the Securities Were Not Purchased on a Canadian Exchange *(continued from page 5)*

purchased the shares, then the statutory tort must be considered to have been committed in Ontario, regardless of where the actual share is purchased. Accordingly, the court rejected the "exchange-based" approach now utilized in the United States and decided that it had jurisdiction over the claims by investors who reside in Ontario even when they purchased securities on an exchange outside of Canada.

Although the *Kaynes v. BP* decision may have limited applicability (because it applies only to those who are residents of Ontario) this is not the first time Ontario courts have demonstrated a willingness to assert jurisdiction over claims stemming from shares purchased outside of Canada. For example, in 2009 in *Silver v. IMAX*, the Ontario Superior Court of Justice initially certified a global class of shareholders[1], including those purchased on the Toronto Stock Exchange and those purchased on the NASDAQ. It will be interesting to watch what develops in securities fraud litigation in Canada and in particular with regard to the court's assertion of jurisdiction over claims arising from securities purchased on non-Canadian exchanges.

[1] In 2013 the Ontario Superior Court dismissed the class members who had purchased shares on the NASDAQ because they were covered by a class action against IMAX in the United States and that class action had reached a settlement.

The Fifth Annual Evolving Fiduciary Obligations of Pension Plans Seminar: A Recap

(continued from page 9)

of fiduciary duty and the evolution of fiduciary standards relating to the financial sector. Mr. Waitzer focused on how the sector itself, and those who rely on the efficient mobilization and allocation of capital, including courts and regulators, will continue to shape the reform process. Mr. Waitzer also provided some insight on what active investors can expect going forward.

In "Are the Courtroom Doors Closing to U.S. Investors? Erosions in Shareholders Rights and What Investors Can Do to Reverse the Trend," moderator and Kessler Topaz partner Matthew Mustokoff asked a series of pointed questions to panelists Catherine LaMarr, General Counsel for the State of Connecticut Office of the Treasurer, Michael Garland, Assistant Comptroller, ESG, for the New York City Office of the Comptroller, and Jonathan Massey, a partner at Massey & Gail LLP. This session spanned several timely topics, addressing how the United States Supreme Court, the U.S. Chamber of Commerce, and corporate America have continued attempts to limit the scope and venue of litigation, eliminate litigation as a viable tool of engagement with corporations, and preventing proxy access and voting. Mr. Garland addressed recent forum selection by-law and forced arbitration clause issues facing investors, as well as other corporate governance matters the ever-active NYCERS has been watching and engaged with of late. Ms. LaMarr spoke to the continuing issues the United States Supreme Court's 2010 decision in *Morrison v. National Australia Bank* has had on her efforts to recover investment losses sustained by her fund in securities purchased on non-U.S. exchanges. Finally, Mr. Massey gave a thorough explanation of closely-watched *Erica P. John Fund, Inc. v. Halliburton Co.*, which is pending before the United States Supreme Court, outlining the extensive briefing on both sides, the questions before the Court, and also providing guidance on what to expect during Oral Argument on March 5, 2014.

In recent months, as David Sirota argued in "The Plot Against Pensions," much publicity and debate has centered around the "public pension crisis" and whether — if there is such a crisis — it has been negatively mischaracterized by corporate stakeholders seeking financial gain through subsidies and tax breaks from slashed retiree benefits. Dean Baker, Co-Director at the Center for Economic and Policy Research, led the EFOPP delegates in a review of the claims in Sirota's report — focusing on the debate surrounding pension shortfalls, examining whether perceptions on this issue really are being misconstrued, and discussing the pros and cons of the possible solutions to pension shortfalls — namely reducing retiree benefits versus raising public revenue.

Kessler Topaz partner Stuart Berman moderated the final panel of the day in which Michael Herrera, Senior Staff Counsel for the Los Angeles County Employees Retirement Association and Adam Franklin, General Counsel for the Colorado Public Employees Retirement Association, educated EFOPP delegates on the continuing effects of the U.S. Supreme Court's 2010 decision in *Morrison v. National Australia Bank*, and how U.S. investors are adjusting to the growth of non-U.S. securities litigation. Herrera and Franklin provided an overview of how their respective funds are working to fulfill their fiduciary duties in crafting best practices to identify, evaluate, and make a determination on how best to proceed in securities action abroad. The challenges that non-U.S. securities litigation present for U.S. investors have been well documented over the past few years post-*Morrison*. But given the significant allocations of U.S. funds to non-U.S. equities, and what appears to be the continuing trend in the growth of shareholder litigation outside the U.S., the panelists made it clear to the audience that U.S. funds must have a plan to address these cases to help ensure their investments are protected.

The day's discussion segued nicely into Barney Frank's remarks. Mr. Frank offered his insights on several pertinent topics to shareholders, including financial regulation, corporate governance and class action litigation. Mr. Frank also spoke about his remarkable 22-year career as a member of the United States House of Representatives and the changes (and challenges) he observed over the years — led in part by the 24-hour news cycle — with regard to the willingness of members of Congress to work with each other for the good of the country. Finally, he discussed his role as a leading co-sponsor of the 2010 Dodd-Frank Act — a sweeping reform of the U.S. financial industry in the wake of the financial crisis. Mr. Frank then engaged the delegates in a lengthy, and lively, Q&A session. It was clear that the audience was deeply engaged with Mr. Frank and appreciated hearing his views on many important issues.

The response to the EFOPP Seminar was again overwhelmingly positive and we are already planning and looking forward to next year. We will be moving locations — escaping to the warm confines of Tempe, Arizona. We are also working to secure another excellent keynote speaker whom we will announce in the coming months. We look forward to hosting you on February 10, 2015.

U.S. Supreme Court to Hear ERISA Case of First Impression *(continued from page 2)*

accept the well pled factual allegations of the complaint as true. The Sixth Circuit concluded that plaintiffs had plausibly alleged that Fifth Third Bancorp had engaged in subprime lending practices, that defendants were aware of the risks of such subprime investments practices and that such risks made continued investment in Fifth Third stock imprudent in violation of ERISA Section 404(a)(1).

On December 14, 2012, defendants filed a petition for writ of certiorari with the Supreme Court of the United States. In an effort to convince the Court that a clear circuit split required its attention, and therefore defendants' petition should be granted, defendants sought to prove that the Sixth Circuit's decision conflicted with circuit court jurisprudence that — according to defendants — has been clearly trending in favor of applying the presumption of prudence at the pleadings stage in ERISA company stock cases such as this one.

Plaintiffs filed their brief in opposition on February 22, 2013. Plaintiffs argued that the Sixth Circuit decision did not conflict with any other court of appeals, emphasizing that varying results in cases of this sort turn on the underlying facts, and an important fact in this case — which differs from the other cases on which defendants relied — is that the Plan here does not limit the ability of the Plan fiduciaries to remove Fifth Third Bancorp stock as an investment option for the Plan, or divest Plan assets invested in Fifth Third stock as prudence dictates.

After a reply brief by defendants, the Court entered an Order on March 25, 2013 inviting the United States Solicitor General to file a brief expressing the views of the United States. The Solicitor General filed its brief on November 12, 2013, and concluded that only one of the two questions presented warranted review by the Court. Namely, whether, to state a claim that a fiduciary of an employee stock ownership plan violated the duty of prudence by continuing to invest plan assets in employer stock, a plaintiff must rebut a presumption that the fiduciary acted prudently by alleging that the employer faced imminent financial peril. The Solicitor General advised the Court that in resolving the conflict of authority on this issue, it should hold that courts need not apply a presumption that an ESOP fiduciary has acted prudently at any stage of the proceedings. Thus while the Solicitor General advised the Court to grant defendants' petition as to this issue, the United States supported plaintiffs' position on the merits.

On December 13, 2013, the Court granted defendants' petition as to its first question. Although the Solicitor General had urged the Court to rewrite the question, the Court chose not to do so, and accepted the question as initially presented by Fifth Third Bancorp: Whether the Sixth Circuit erred by holding that respondents were not required to plausibly alleged in their complaint that the fiduciaries of an employee stock ownership plan abused their discretion by remaining invested in employer stock, in order to overcome the presumption that their decision to invest in employer stock was reasonable, as required by the Employee Retirement Income Security Act of 1974 . . . and every other circuit to address the issue.

The parties have since submitted their briefs on the merits and await oral argument. Defendants continue to argue that even if every fact in plaintiffs' complaint were taken as true, plaintiffs could not establish that they were due any relief under the deferential standard of review owed to ESOP fiduciaries. Plaintiffs conversely urge the Supreme Court to look to the plain language of the statute, which clearly establishes a standard of care to which the Plan fiduciaries are required to adhere, and does not support application of a presumption of prudence to the fiduciaries' decision to continue investment in Fifth Third Bancorp stock. Several amici briefs were filed in support of both parties' positions, with the United States Solicitor General, AARP and AFL-CIO, among others, filing in support of plaintiffs' position on the merits.

This issue is one of first impression for the Supreme Court and if the Court were to find in favor of defendants, it could mean a loftier legal hurdle for employees seeking to recover retirement savings losses due to plan fiduciaries' failure to take appropriate action in light of declining value of company stock due to corporate mismanagement. Plaintiffs, however, present strong textual and factual arguments in opposition and are hopeful that the Court will consider the impact of defendants' position on retirement plan participants and beneficiaries. As one of the only firms in the country to try an ERISA company stock case to verdict, our expertise makes us uniquely qualified to handle these issues on appeal and we hope to see a decision that will encourage, as opposed to hinder, our ability to continue to litigate these cases on behalf of those plan participants and beneficiaries who have suffered losses due to clear fiduciary breaches.

Calendar of Upcoming Events

National Conference on Public Employee Retirement Systems (NCPERS) Annual Conference & Exhibition

April 27 – May 1, 2014

Sheraton Chicago Hotel and Towers — Chicago, IL

More than 1,000 trustees, administrators, state and local officials, investment, financial and union officers, pension staff and regulators attend each year, making this the largest pension conference in the country. The 2014 Annual Conference focus is "Navigating the River of Pension Success."

Council of Institutional Investors (CII) Spring Conference

May 7 – 9, 2014

Marriott Wardman Park Hotel — Washington, D.C.

CII's Spring Conference will feature three days of high-level speakers addressing issues faced by all institutional investors.

State Association of County Retirement Systems Spring Conference

May 13 – 16, 2014

Sheraton Grand — Sacramento, CA

SACRS is an association of 20 California county retirement systems, enacted under the County Employees Retirement Law of 1937. SACRS now meets as an organization twice a year, including the Spring Conference, with all 20 counties participating through attendance by Trustees, Administrators, Treasurers and staff. Education and legislation are the principle focus of these meetings, particularly education in the investment and iduciary responsibility area.

Pennsylvania Association of Public Employee Retirement Systems 10th Annual Spring Forum

May 28 – 29, 2014

Hilton Hotel — Harrisburg, PA

Since 2005, PAPERS has been dedicated to encouraging and facilitating the education of its membership in all matters related to their duties as fiduciaries overseeing the assets of the pension funds with which they have been entrusted. PAPERS is proud to host its 10th Annual Spring Forum, as well as other training opportunities throughout the year, to provide the basis for improved financial and operational performance of the public employee retirement systems in Pennsylvania.

U.S. Markets Central States Institutional Investor Forum

June 17, 2014

Renaissance Hotel — Nashville, TN

The program's agenda will cover investments, fiduciary responsibilities, legal and legislative issues, healthcare benefits, actuarial assumptions, asset/liability management and best practices in fund Management. The forum is specially designed to bring together 100+ attendees representing Alabama, Arkansas, Kentucky, Mississippi, Missouri, Louisiana and Tennessee.

Benefits Without Borders: Global Pension and Employee Benefits Lawyers Conference

June 22 – 24, 2014

Drake Hotel — Chicago, IL

This two-day conference, presented jointly by the Canadian Bar Association's National Pension & Benefits Law Section, the American Bar Association's Joint Committee on Employee Benefits, and the International Pension and Employee Benefits Lawyers Association, will deal exclusively with pensions and benefits in the context of a changing global environment. The conference will feature a number of interesting and thought-provoking sessions on pension law and governance, executive compensation, issues in investing plan assets, public pension and social security programs, trends in benefits, and more!

National Association of Public Pension Attorneys (NAPPA) Legal Education Conference

June 25 – 27, 2014

Sheraton Downtown Hotel — Nashville, TN

Florida Public Pension Trustees Association 30th Annual Conference

June 29 – July 2, 2014

Hilton Bonnet Creek — Orlando, FL

FPPTA's Annual Conference will once again bring together hundreds of trustees and staff for three days of education with dynamic speakers and panelists to discuss the most pressing issues facing Florida public pension funds. The Conference will be capped off with a 30th Anniversary celebration.

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