

Frequently Asked Questions

- [Securities Fraud](#)
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- [open/close What is a class action?](#)

A class action is a representative lawsuit which allows a representative or named plaintiff to sue a defendant or defendants on behalf of other people who have suffered the same type of harm. A class action is filed when the issues in a case apply to so many people that it is not practical for all of them to file their own individual actions.

- [open/close What is a securities class action?](#)

A securities class action is a class action filed by investors who purchased a company's debt or equity offering within a specific period of time known as a class period and who have suffered economic injury because a significant negative public disclosure about the company during that class period caused a serious drop in the company's stock price. Securities class actions generally are brought under the anti-fraud provision of the federal securities laws including Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 and the Securities Act of 1933.

- [open/close What are the benefits of a securities class action?](#)

A securities class action provides small shareholders with the ability to litigate on an equal playing field with the large, well-funded corporations who have allegedly violated the securities laws and have a lot of money to spend on defending lawsuits directed at those violations. A class action allows many people who would never have brought an individual action against a company to seek recovery from the company without having to individually retain a lawyer and incur a legal fee.

- [open/close When is a securities class action filed against a company?](#)

Securities class actions are typically brought when: (a) a publicly held company and its officers, directors, other employees, accountants or underwriters makes an untrue statement of a material fact or omits to state a material fact in a publicly disseminated communication such as a press release, newspaper article, analyst report, prospectus or proxy statement; and (b) as a result of the untrue statement or omission, the company's stock drops, injuring investors who purchased the stock during the class period.

- [open/close What is a class period?](#)

A class period is a specific period of time that starts on the day that a company makes an untrue statement of a material fact or the day that the company has a duty to disclose a material fact and fails to do so. The class period ends on the day that the untrue statement or omission is publicly announced.

- [open/close How do I know if I have a securities fraud claim?](#)

If you purchased a publicly traded security which has declined in value following a significant negative disclosure about the company, you may have a claim. Bernstein Litowitz Berger & Grossmann LLP can quickly investigate the facts and advise you as to whether you have a viable securities fraud claim. If you wish to discuss your claim or have any questions concerning your rights in a securities fraud action, please e-mail us at blbg@blbglaw.com. For a description of our securities fraud practice, click [here](#).

- [open/close Do I have a claim if I sold my stock before or during the filing of a securities class action?](#)

A valid claim in a securities class action depends on when the stock was purchased. If you purchased your stock during the class period and suffered losses as a result of the alleged fraud (i.e., you sold your stock after a

negative disclosure about the company), you have a claim even if you sold your stock before the start of a securities class action.

- [open/close Do I have to hold my stock once a securities class action is filed?](#)

Once a securities class action is filed, you do not need to hold the stock in order to participate in a class action or in a class action settlement. However, if you sell your stock within the first 90 days following a negative disclosure, your damages will be capped at the difference between the price at which you purchased the security and the price at which you sold it.

- [open/close If I continue to hold stock in a company after a significant negative disclosure, will I be precluded from participating in a settlement?](#)

No, you can still participate in a settlement. In the event that you continue to hold the stock, your damages will be limited to the difference between the price paid for the stock and the mean trading price of that security during the 90 day period following the company's negative disclosure.

- [open/close Should I bother to start a securities class action if I know that an action has already been started?](#)

If you have suffered meaningful losses, you should exercise your right to choose the best available lawyers to pursue your claims. Selecting experienced counsel insures that your claims will be pursued diligently. Bernstein Litowitz Berger & Grossmann LLP has a long history of obtaining excellent recoveries for class members.

- [open/close What is a lead plaintiff in a securities class action?](#)

A lead plaintiff, also known as a named plaintiff or a representative plaintiff, is appointed by the court as that plaintiff most capable of representing the interests of the class members and is generally that plaintiff that has the largest financial interest in the relief sought by the class. Lead plaintiff designation can be granted to individuals, groups of individuals or institutional investors.

- [open/close How does one become a lead plaintiff?](#)

Under the Private Securities Litigation Reform Act of 1995, courts will appoint a lead plaintiff or plaintiffs to represent a class from the member or members of a class who (i) request to be a lead plaintiff within 90 days of the publication of a notice of the pendency of a class action; and (ii) are most capable of adequately representing the interests of the class. Bernstein Litowitz Berger & Grossmann LLP provides investors with a comprehensive information package on the specific requirements of lead plaintiffs for those securities class actions filed by our firm. Contact us.

- [open/close What are the responsibilities of a lead plaintiff in a securities class action?](#)

Once the lead plaintiffs are appointed by the court, they may select and retain counsel to represent the class. The lead plaintiffs are encouraged to have oversight of, and input into, the litigation of a class action beyond that of other class members.

- [open/close How are damages calculated in a securities class action?](#)

The parties hire damage experts to calculate the amount that the stock was inflated during the class period. This calculation attempts to estimate the amount that you would have paid for your stock if all material facts were known at the beginning of the class period. This figure approaches but does not necessarily match, the total amount that you lost on your investment because the stock price may have dropped during the class period due to factors other than the alleged fraud.

- [open/close How long does it take for a securities class action to be resolved?](#)

It varies. Some cases settle shortly after the action is brought and some cases may be litigated for years and eventually go to trial. At Bernstein Litowitz Berger & Grossmann LLP, we aggressively prosecute all our cases. Although we seek to move a case along as quickly as possible, we are always prepared to take a case to trial.

- [open/close What does it cost to bring a securities class action?](#)

Bernstein Litowitz Berger & Grossmann LLP prosecutes securities class actions on a contingency fee basis. We will seek fees from the court if, and only if, we are successful in obtaining a recovery for the class. All costs and expenses of the litigation are advanced by Bernstein Litowitz Berger & Grossmann LLP. In the event of a favorable resolution of the case, we will seek reimbursement for those expenses from the court.

- [open/close How much of the recovery will be used to pay attorney fees?](#)

Attorney's fees are generally awarded as a percentage of the benefit achieved by the attorneys for the class. These percentages vary depending upon, among other factors, the size of the recovery for the class, and the length and complexity of the litigation. In any event, it is the court, after full notice of class members, that determines what is a fair and reasonable fee.

- [open/close What is a derivative action?](#)

A derivative action is a lawsuit brought by a shareholder of a corporation, on behalf of the corporation, to enforce a cause of action against a third party, such as an officer or director of that corporation. Derivative actions are brought when a corporation possesses, but does not enforce, its rights against third parties. It is often necessary for a shareholder to institute a derivative action because the corporation, which is run by officers and directors, will not bring a lawsuit against one of their own, even if there has been serious wrongdoing.

- [open/close What types of charges are filed in a derivative lawsuit?](#)

Derivative actions most often involve charges that officers and directors are wasting corporate assets, or that a corporation's management or board of directors breached fiduciary duties owed to shareholders by negligence, mismanagement or self-dealing.

- [open/close Do I have to own stock in the company to bring a derivative action?](#)

Yes, you must be a current shareholder and continue to hold the stock until the derivative action is resolved.

- [open/close How do shareholders benefit from derivative actions?](#)

Any relief granted pursuant to a derivative action is a judgment against a third person requiring them to pay money to, or make changes for, the benefit of the corporation. If money is recovered as a result of a derivative action, it would be paid back to the corporation, which could have a positive effect on the company's stock price and benefit all current shareholders.

- [open/close Will I have to pay anything if I bring a derivative action?](#)

No. All expenses are advanced by Bernstein Litowitz Berger & Grossmann LLP. We will recover attorney's fees only if we obtain a benefit for the corporation and the court approves a fee.

- [open/close What is employment discrimination?](#)

Illegal discrimination takes place when the motivating factor of any employment decision is the sex, race, age (for employees over 40), national origin, religion or disability of an employee. Discrimination includes harassment which is based on any of the above characteristics when the harassment interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment.

Discrimination may also occur when an employer uses neutral job policies (such as a test or certain application or promotion procedures) that disproportionately exclude employees with the above characteristics and are not job related. Discrimination does NOT occur when another employee receives the job, promotion, or other benefit you desire but that employee has the same characteristics as you (i.e. race, sex, etc.)

- [open/close What should I do if I think I have been discriminated against?](#)

There are a few things that you can do. If you are still employed at your company, and there is a complaint procedure or an employee relations or human resources department, you may want to file a complaint or speak with someone in those departments. If there is no such procedure in place, you may want to speak with a manager or supervisor, if you feel comfortable doing so. You may also want to contact the Equal Employment Opportunity Commission ("EEOC") in your area or the State Human Rights Division. Before most

types of discrimination lawsuits can be brought, an employee must file a charge with the EEOC within either 180 days or 300 days from the date of the discriminatory act, depending on certain factors. Employees of the federal government, including the United States Postal Service, may have different complaint procedures. These employees should check with their personnel departments for the appropriate procedures. You may also want to contact a lawyer before communicating with the EEOC or your employer. Bernstein Litowitz Berger & Grossmann, as well as other professionals in this area, will handle your inquiries discreetly and advise you of your rights without any obligation. Of course, Bernstein Litowitz Berger & Grossmann will also maintain the strictest confidence in evaluating your employment discrimination claim.

- [open/close How do I know if annoying or bothersome behavior is sexual harassment?](#)

There are two types of conduct which may constitute sexual harassment. Both of them are considered "sex discrimination" under federal law. The first type of sexual harassment is called "Quid Pro Quo" sexual harassment. Unwanted sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature constitutes sexual harassment when giving in to or rejecting this conduct will affect your employment. The second type of sexual harassment is called "Hostile Work Environment" sexual harassment. This type of sexual harassment takes place when conduct of a sexual nature -- either verbal or physical -- unreasonably interferes with your work performance or creates an intimidating, hostile or offensive work environment. Whether the objectionable behavior will legally constitute sexual harassment depends on whether the average person in the victim's position would find the behavior hostile or abusive.

- [open/close I think I've been discriminated against because of my race/sex/age/religion/national origin/disability, but I also think there may be another reason for the employment related action that was taken against me. Is this still discrimination?](#)

Yes. Under the Civil Rights Act of 1991, illegal discrimination exists when the discrimination was a motivating factor for the complained of employment practice, even though other factors also motivated the conduct at issue.

- [open/close I am over 40 and I was recently laid off. My employer asked me to sign a waiver that I would not bring any claims against the company and I signed it. Does that mean that now I can't bring a discrimination claim against my employer?](#)

Not necessarily. Under the Older Workers Benefit Protection Act, 29 U.S.C. § 621 et seq., in order for a waiver to be considered valid, the waiver must be written in a manner that is "calculated to be understood," must allow the employee at least 21 days (in some cases, 45 days) to review the waiver before deciding whether to sign it, must provide the employee with some additional compensation or benefit to which he or she was not already entitled, and must contain other specific information. The waiver must also provide that for a period of at least 7 days following the signing of the waiver, the employee may revoke the agreement. In all cases when you are presented with such a waiver agreement, it is a good idea to have an attorney review the agreement before signing it.

- [open/close Does the sexual harassment law apply where the harasser is the same sex as the victim?](#)

Yes. The Supreme Court decided on March 4, 1998, in a case entitled *Oncale v. Sundowner Offshore Services, Inc.*, No. 96-568, 1998 U.S. LEXIS 1599 *3 (Mar. 4, 1998), that "Title VII's prohibition of discrimination 'because of sex' protects men as well as women." This protection extends to both men and women in "quid pro quo" sexual harassment and "hostile work environment" harassment where the harasser is of the opposite sex or the same sex.

- [open/close Do the federal anti-discrimination statutes apply to all employers?](#)

No. Title VII of the Civil Rights Act of 1991, which is the primary discrimination statute, and the Americans with Disabilities Act apply to employers with more than 15 employees. The Age Discrimination in Employment Act applies to employers with 20 or more employees.

- [open/close How do I know if I have an employment discrimination claim?](#)

If you believe that you have been discriminated against by your employer or prospective employer, you may have a claim. Bernstein Litowitz Berger & Grossmann can quickly investigate the facts and advise you as to whether you have a viable employment discrimination claim. E-mail us at blbg@blbglaw.com or call firm partner [Jerry Silk](#) (212-554-1282) and your inquiries will be promptly responded to.

- [open/close Should I bother to start my own employment discrimination case if I know that an action has already been commenced against my employer, or my prospective employer?](#)

If you have experienced discrimination in your workplace, or by a prospective employer, you should exercise your right to choose the best available lawyers to pursue your employment discrimination claim. Selecting experienced counsel insures that your claims will be pursued diligently. Bernstein Litowitz Berger & Grossmann has a proven record of obtaining excellent results for employees.

- [open/close What does it cost to bring an employment discrimination action?](#)

Bernstein Litowitz Berger & Grossmann prosecutes all of its employment discrimination cases on a contingency basis. All costs and expenses of the litigation are advanced by Bernstein Litowitz Berger & Grossmann. We receive attorneys' fees if, and only if, we are successful in obtaining a recovery for the employee.

- [open/close How long does it take for an employment discrimination case to be resolved?](#)

It varies. Some cases settle shortly after the action is brought, and some cases may be litigated for years and eventually go to trial. Bernstein Litowitz Berger & Grossmann aggressively prosecutes its cases and seeks to move them along as quickly as possible.

- [open/close What damages are available in an employment discrimination case?](#)

An employee may recover damages for back pay, front pay, prejudgment interest and lost benefits. An employee's recovery may also include compensatory damages for non-monetary losses such as emotional pain, inconvenience, mental anguish and loss of enjoyment of life. If the employer's actions were particularly egregious, an employee may be entitled to punitive damages. For example, under Title VII of the Civil Rights Act of 1991, an employee may recover up to \$300,000 in compensatory damages and punitive damages, in addition to damages for monetary losses such as back pay, front pay, prejudgment interest and benefits.

- [open/close What is consumer fraud?](#)

Consumer fraud encompasses a wide range of improper practices involved in the advertising, marketing, sale, or provision of goods or services. For example, consumer fraud may occur when a product or service does not perform in the manner in which it was advertised or represented to perform. It may also occur when a company overcharges or improperly charges consumers for a product or service. Additionally it may occur when a company interprets a form contract or agreement in a manner that unfairly disadvantages consumers. If you feel that you have been treated unfairly by a provider of a good or a service, you may have been the victim of consumer fraud, and it may be worthwhile to investigate the matter further.

- [open/close What should I do if I think I have been defrauded?](#)

There are a number of steps you can take. The first step is to contact the company that you believe has engaged in consumer fraud and try to get your problem resolved. If you do not get satisfactory results from the person who answers the phone, ask to speak to a superior. "Higher ups" in the company can often resolve a problem for a consumer even when lower-level employees cannot, especially if the problem is an isolated incident. There are also numerous governmental and private organizations that can help you. Most state Attorney General offices have consumer protection divisions, and many have consumer complaint hot lines and web pages. Many states and larger cities have consumer protection boards, administrations, or agencies. Federal agencies such as the Federal Trade Commission may also be helpful. In addition, such organizations as the Better Business Bureau can be of invaluable assistance with complaints of consumer fraud. You may also want to consult an attorney, especially if you have suffered a large loss or damage or you feel that your

problem is also being experienced by a large number of other people. Bernstein Litowitz Berger & Grossmann LLP, as well as other professionals in this area, will investigate your inquiries and advise you of your rights without any cost or obligation. IMPORTANT NOTE: However you decide to proceed, you should be sure to document the problem as completely as you can. Save all receipts and written materials provided by the company. Take notes on all of your conversations with the company. It may be helpful in certain instances to take photographs if they will help to demonstrate a problem. The more you can document about your purchase and any problems you are having, the better your chance of success.

- [open/close What is a class action?](#)

A class action is where a number of people who have the same legal complaint bring a lawsuit as a group, called the class. The basic requirement is that there be "similarly situated" individuals with common factual and legal concerns. Class actions are most valuable in areas where it would not make sense or be economically feasible to pursue numerous, small individual claims. Consumer fraud claims are an excellent example of a situation where, if cases are not brought on class-wide bases, they probably would not be brought at all. In that situation, a company would wrongfully be able to keep its profits from its actions in having fleeced consumers.

- [open/close What are the benefits of class actions?](#)

A class action puts the class in a much stronger position to litigate against the defendants. Because the class is, by definition, numerous, the defendants' potential liability is much greater than it would be if the class representative were only suing on his or her own behalf. As a result, defendants must take the litigation much more seriously than if they were being sued by an individual person.

- [open/close Who may bring a class action?](#)

A class action can be brought by anyone who has individual standing (that is, has been harmed or injured by a particular person or entity in violation of a law or laws) and, in general, who has claims that are typical of other class members, has no conflicts of interest with other class members, and has retained competent, experienced counsel. The class representative must be knowledgeable about the lawsuit, available to consult with his or her attorneys regarding the status of the case, and be available to execute affidavits and appear at deposition or trial if required.

- [open/close What types of claims are brought in consumer fraud class actions?](#)

Consumer fraud class actions generally fall into several categories. Many allege that merchandise, services or products are not performing the way they were represented or advertised to perform (because of false advertising, product defects, or other reasons). Class actions also often involve situations in which consumers are being overcharged or improperly charged for goods or services. Another fertile ground for class actions are situations in which companies performing form contracts (such as, for example, insurance contracts, mortgages, or loan agreements) in ways that disadvantage consumers. Most states have laws prohibiting unfair or deceptive trade practices and false advertising; class actions often allege violations of these statutes. Class actions often also allege breach of contract, negligence, and fraud, and other causes of action. However, just being unsatisfied with something you have bought may not be a sufficient basis for a class action. The defendant's conduct is the key. In class actions alleging that merchandise, services or products are not performing the way they were represented or advertised to perform, it is generally necessary that there be a deception on the part of the defendant in order to recover in a consumer fraud class action. In some instances it is possible to recover for innocent, as well as willful, misrepresentations or false statements. It is important to remember that an omission of a material fact can be as misleading as a false statement, and can form the basis for a class action.

- [open/close In what other areas are class actions common?](#)

Class action lawsuits are potentially available in all areas of law. Bernstein Litowitz Berger & Grossmann LLP has active practices in the areas of securities law violations, employment discrimination and sexual harassment, antitrust law violations, and mass tort litigation (such as environmental disasters, and illnesses related to defective medications).

- [open/close How do I bring a consumer fraud class action?](#)

Contact Bernstein Litowitz Berger & Grossmann LLP. We will investigate your claim and determine if a class action would be appropriate. You can e-mail us at blbg@blbglaw.com or call at 800-380-8496.

- [open/close What does it cost to bring a class action?](#)

If you bring a class action and are represented by Bernstein Litowitz Berger & Grossmann LLP you will not have to pay any attorneys' fees. Bernstein Litowitz Berger & Grossmann LLP will seek reimbursement solely from the Court if it recovers money or other benefits for you and the class. Bernstein Litowitz Berger & Grossmann LLP will also advance all costs and expenses of the litigation and, if there is a settlement or favorable resolution of the action, will seek reimbursement of its costs and expenses from the defendant.

- [open/close How long does it take for a class action to be resolved?](#)

It varies. Some cases settle shortly after the action is brought, and some cases may be litigated for years and eventually go to trial. Bernstein Litowitz Berger & Grossmann LLP aggressively prosecutes its cases and seeks to move them along as quickly as possible.

- [open/close Should I bother to start a class action if I know that an action has already been commenced?](#)

If you have suffered meaningful losses, you should exercise your right to choose the best available lawyers to pursue the claims of the class. Selecting experienced counsel insures that your claims will be pursued diligently. Bernstein Litowitz Berger & Grossmann LLP has a long history of obtaining excellent recoveries for class members.

- [open/close Does Bernstein Litowitz Berger & Grossmann LLP handle cases outside of New York?](#)

Yes. Bernstein Litowitz Berger & Grossmann LLP will pursue consumer fraud class actions in the federal courts and the courts of all fifty states.

- [open/close What is Bernstein Litowitz Berger & Grossmann LLP's track record?](#)

Bernstein Litowitz Berger & Grossmann LLP has recovered billions of dollars for class members. Numerous courts have recognized the firm's ability and dedication in representing its clients and achieving excellent results for class members.