Supreme Court Victory for Investors in Halliburton - Plaintiffs in Securities Cases Not Required to Prove "Loss Causation" at Class Certification Stage

June 6, 2011

On Monday, the Supreme Court issued a unanimous opinion in *Erica P. John Fund, Inc. v. Halliburton Co., et al.*, -- S.Ct. --, 2011 WL 2175208 (June 6, 2011), which vacated a decision of the Fifth Circuit below and held that plaintiffs in a §10(b) class action are not required to prove "loss causation" (i.e., that an investors' losses were actually caused by the alleged fraud rather than unrelated factors) at class certification. *Halliburton* is an important decision and a significant victory for investors.

Although the decision might appear to involve only a narrow procedural issue as to *when* a court should decide loss causation issues, as a practical matter the "timing" issue was critically important. Under the Fifth Circuit's prior precedents, because a plaintiff was required to prove loss causation at class certification under the standards of Rule 23, a plaintiff was not only forced to show loss causation without the benefit of full discovery and a complete factual record, but was *also* required to prove loss causation to the satisfaction of the court under a demanding "preponderance of the evidence" standard. Under the Supreme Court's decision in *Halliburton*, however, ***no proof*** of loss causation is required at class certification - and any disputed factual issues as to whether loss causation exists can thereafter only be disposed of pre-trial if defendants -- at summary judgment and after full discovery - can meet the heavy burden of showing under Rule 56 that there is "no genuine dispute as to any material fact," and that defendants are entitled to judgment on loss causation issues as a matter of law. In sum, *Halliburton* has dealt a major set-back to the efforts of corporate defendants to terminate meritorious actions before they can reach a jury.

Because most circuits had already rejected the Fifth Circuit rules that the Supreme Court rejected in *Halliburton*, the opinion will likely have relatively little impact on existing rules in most other circuits. However, the 9-0 decision in *Halliburton*, as well as the Court's 9-0 pro-investor decision earlier this year in *Matrixx Initiatives, Inc. v. Siracusano*, 131 S.Ct.1309 (2011), clearly represent significant victories for investor interests, and should temper the willingness of some lower courts to embrace defendants' constant efforts to create new and unreasonable hurdles to the litigation of meritorious investor claims.

Bernstein Litowitz was extensively involved in efforts to advance investor interests before the Supreme Court on the *Halliburton* appeal, and was co-counsel on briefs filed on behalf of two separate groups of *amici curiae* ("friends of the court") in support of overturning the Fifth Circuit's decision below.