

BLB&G Strongly Encourages Institutional Investors to Join *Amicus* Brief Supporting Petitioner in *IndyMac* Pending Before U.S. Supreme Court

April 23, 2014



On March 10, 2014, the United States Supreme Court granted a petition for *certiorari* in *Public Employees' Retirement System of Mississippi v. IndyMac MBS, Inc.* As a matter of significant importance to institutional investors worldwide, BLB&G is strongly encouraging institutional investors to participate as a named party on an *amicus curiae* ("friend of the Court") brief of institutional investors being prepared by BLB&G and James A. Feldman, a highly experienced Supreme Court practitioner, in consultation with counsel to Mississippi PERS, the petitioner in *IndyMac*.

In this case, the Court will decide whether the filing of a class action satisfies the three-year time limitation in § 13 of the Securities Act of 1933 and preserves the claims of all potential class members, the status quo on this point of law since a 1974 Supreme Court decision known as *American Pipe*. It was long understood in the lower courts that the *American Pipe* rule applied to this three-year limitation period, as well as the corresponding five-year limitation period applicable to claims under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. Thus, investors who were members of the putative class were able to rely on the filing of a class action to prevent their claims from becoming time-barred unless and until the court denied a motion for class certification.

In *IndyMac*, however, the U.S. Court of Appeals for the Second Circuit held that *American Pipe* does not apply to the three-year limitation period under the Securities Act. The practical effect of this ruling, if it is not reversed by the Supreme Court, will be that investors will no longer be able to rely on the filing of a class action to preserve their claims. Instead, investors will have to monitor closely the progress of class certification in each case. In the large number of cases in which it looks as if class certification may not be decided until after the statute of limitations on new claims will have run, investors will need to file their own actions or move to intervene in the class action, or risk losing their right to recover for violations of the federal securities laws.

A draft of the *amicus curiae* brief is expected to be completed by early May, and will be available for review and approval by institutional investors who are interested. The brief will express the signing investors' support for the

application of *American Pipe* to the three-year limitations period for Section 11 claims and emphasize the importance of private securities class actions to long-term institutional investors.