

Susan K. Alexander
salexander@rgrdlaw.com
415-676-4411

September 28, 2015

VIA ECF

Mr. Michael E. Gans
Clerk of Court
United States Court of Appeals
For the Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, MO 63102

Re: *IBEW Local 98 Pension Fund, et al. v. Best Buy Co., Inc., et al.*, No. 14-3178

Federal Rules of Appellate Procedure 28(j) submission re:

Ludlow v. BP, P.L.C., __ F.3d __, No. 14-20420, 2015 WL 5235010
(5th Cir. Sept. 8, 2015);

In re Goldman Sachs Grp., Inc. Sec. Litig., __ F. Supp. __, No. 10 Civ. 3461
(PAC), 2015 WL 5613150 (S.D.N.Y. Sept. 24, 2015)

Both applying *Halliburton Co. v. Erica P. John Fund, Inc.*, __ U.S. __, 134 S. Ct.
2398 (2014) (“*Halliburton II*”)

Dear Mr. Gans:

As defendants around the country attempt to persuade courts of the interpretation of *Halliburton II* defendants urge here, they have yet to identify a court that accepts their reasoning. The Fifth Circuit and yet another district court have rejected precisely the arguments on which defendants rely in this interlocutory appeal.

First, *Goldman* again confirmed defendants bear the burden of persuasion in establishing the absence of price impact to rebut a well-established fraud-on-the-market presumption at class certification. “Defendants must demonstrate a lack of price impact by a preponderance of the evidence.” 2015 WL 5613150, at *4 n.3. To satisfy that burden, defendants must “demonstrate a complete lack of price impact.” *Id.* at *6.

Second, consistent with the district court here, *Goldman* held that “the fact that there was no stock price increase when the statements were made does not suggest a lack of price impact,”

1077757_1

Mr. Michael E. Gans
Clerk of Court
United States Court of Appeals
For the Eighth Circuit
September 28, 2015
Page 2

acknowledging the plausible allegation that “the misstatements simply served to maintain an already inflated stock price.” *Id.* “Price impact ‘can be shown by a stock price reaction either at the time of the statement or at the time of the corrective disclosure, [and] analysis of price impact usually focuses on stock price movement at the time the truth is disclosed.’” *Id.* (citation omitted).

Third, again consistent with the district court here, *BP* (and *Goldman*) held that parsing of “corrective disclosures” is relevant to loss causation, but not to price impact. The Fifth Circuit explained that “[a]ddressing the corrective events question at the class certification stage raises two problems. First, it is in tension with *Halliburton I*’s holding that no proof of loss causation is required at the class certification stage.” *BP*, 2015 WL 5235010, at *8. “Second, in *Amgen*, the Court made clear that questions ‘common to the class’ need not be proved at the class certification stage, so long as they are capable of common resolution.” *Id.* (finding “the question of whether certain corrective disclosures are linked to the alleged misrepresentations in question [to be] undeniably common to the class, and [] ‘susceptible of a class-wide answer’”) (citation omitted); accord *Goldman*, 2015 WL at *6-*7.

Sincerely,



Susan K. Alexander

SKA:tjl

This letter contains 350 words in compliance with Fed. R. App. P. 28(j).

DECLARATION OF SERVICE

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is Post Montgomery Center, One Montgomery Street, Suite 1800, San Francisco, California 94104.

2. I hereby certify that on September 28, 2015, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system.

3. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

4. I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following non-CM/ECF participants:

Marc Falcone
Robin Tarnofsky
Paul & Weiss
1285 Avenue of the Americas
New York, NY 10019-6064

Tyler R. Green
U.S. Chamber of Commerce
1615 H Street, N.W.
Washington, D.C. 20062

D. Semus Kaskela
Barroway & Topaz
280 King of Prussia Road
Radnor, PA 19087-0000

Steven F. Marino
Marino & Conroy
301 Wharton Street
Philadelphia, PA 19147

Melissa W. Wolchansky
Halunen & Associates
80 S. Eighth Street, Suite 1650
Minneapolis, MN 55402

I declare under penalty of perjury that the foregoing is true and correct. Executed on
September 28, 2015, at San Francisco, California.



TAMARA J. LOVE