

May 31, 2012

VIA FEDEX

Mr. William K. Suter, Clerk
Supreme Court of the United States
One First Street, NE
Washington, DC 20543

Re: *Amgen Inc., et al. v. Connecticut Retirement Plans and Trust Funds*, No. 11-1085

Dear Mr. Suter:

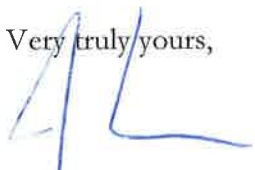
I write on behalf of Respondent Connecticut Retirement Plans and Trust Funds (“Connecticut”) to advise the Court of a recent development in connection with the petition for a writ of *certiorari* (“Petition”) in the above-captioned action.

In opposing the Petition, Connecticut advised the Court of a pending Rule 23(f) petition to the Fifth Circuit involving the parties in *Erica P. John Fund, Inc. v. Halliburton Co.*, 131 S. Ct. 2179 (2011). See Brief in Opposition at 16, 25-26 (refuting Petitioners’ claim (at Pet. 18.) that “the likelihood that the issues [presented by the Petition] will be presented again in a discretionary Rule 23(f) appeal is necessarily low”).

On May 21, 2012, Petitioners filed their reply brief, noting (at 8) that the Fifth Circuit had not granted the petition. Enclosed is an order issued the following day, May 22, 2012, in which the Fifth Circuit granted the Rule 23(f) petition. Also enclosed is a brief dissent by Judge Dennis, which notes that, similar to a position Petitioners take here, “defendants base their appeal” on the argument that “they have rebutted the presumption of reliance.”

For the Court’s convenience, I have included 40 copies of this letter and enclosed order. Connecticut respectfully requests that the Court consider the order in connection with its deliberations on whether to grant or deny the Petition. We would appreciate it if this letter and accompanying order are forwarded to chambers as soon as possible.

Very truly yours,



Jonathan M. Plasse
Enclosure

cc: Seth P. Waxman, Esq. (w/encl.)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 12-90007

ERICA P. JOHN FUND, INCORPORATED, formerly known as Archdiocese
of Milwaukee Supporting Fund Inc, On Behalf of Itself and All Other
Similarly Situated,

Plaintiff - Respondent

v.

HALLIBURTON COMPANY

Defendant - Petitioner

PATRICIA A. MAGRUDER, On Behalf of Herself and All Others
Similarly Situated

Plaintiff

v.

HALLIBURTON COMPANY; DAVID J. LESAR,

Defendants - Petitioners

Motion for Leave to Appeal
under Fed. R. Civ. P. 23(f)

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for leave to appeal under Fed.

R. Civ. P. 23(f) is *granted*.

DENNIS, Circuit Judge, dissenting.

I respectfully dissent from the decision to grant the defendants' petition for leave to appeal the district court's class certification decision. In reversing this court, the Supreme Court explicitly instructed that on remand, we may only consider those arguments that the defendants have preserved. *Erica P. John Fund, Inc.*, 131 S. Ct. at 2187 (“*To the extent Halliburton has preserved any further arguments against class certification, they may be addressed in the first instance by the Court of Appeals on remand.*” (emphasis added)). The only argument on which the defendants base their appeal is that they have rebutted the presumption of reliance. *See Basic Inc. v. Levinson*, 485 U.S. 224, 248 (1988). Although this argument has been available since *Basic* was issued in 1988, the defendants chose not to raise it before the district court when the class certification proceedings were being held in this case, in 2008. Accordingly, they failed to preserve this argument, and pursuant to the Supreme Court's instruction, we should not consider it now. Thus, I would deny the defendants' petition for leave to appeal.