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BY ECF

October 1, 2015

Re: *IBEW Local 98 Pension Fund, et al. v. Best Buy Co. Inc., et al.*, No. 14-3178;  
Response to Plaintiff's Submission of *Ludlow v. BP, P.L.C.*, No. 14-20420,  
2015 WL 5235010 (5th Cir. Sept. 8, 2015); *In re Goldman Sachs Grp., Inc*  
*Sec. Litig.*, No. 10 Civ. 3461 (PAC), 2015 WL 5613150 (S.D.N.Y. Sept. 24,  
2015)

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

Dear Mr. Gans:

I write in response to plaintiff's most recent 28(j) submission, dated  
September 28.

Far from supporting plaintiff's position that a court may not consider, at class certification, whether an alleged corrective disclosure is, in fact, corrective of an alleged misrepresentation, *Goldman* actually adopts defendants' position here. *Goldman* expressly considered whether there was evidence "linking the challenged statements to the April and June 2010 declines on Goldman Sachs' stock price." 2015 WL 5613150, \*7. The *Goldman* court found there was such evidence, which demonstrates that although the outcome of this analysis will vary from case to case, evaluating the connection between alleged misrepresentation and asserted corrective disclosure is appropriate at class certification. Here, contrary to Supreme Court teaching that class certification must be based on factual findings supported by evidence, the district court did not analyze the linkage between the alleged misrepresentations and the asserted corrective disclosure, but simply concluded that they "could have" been linked.

While *Goldman* stated that defendants bear the burden of proving a lack of price impact, the court did not evaluate or even mention the effect of Federal Rule of Evidence 301, which governs presumptions, and provides in part that "this rule does not

Mr. Michael E. Gans

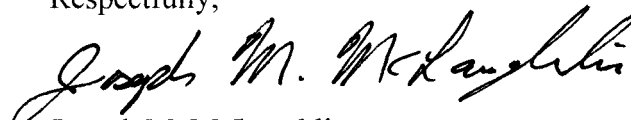
-2-

October 1, 2015

shift the burden of persuasion, which remains on the party who had it originally.” *See App. Br. at 26-29.*

The *BP* decision denied class certification of a pre-spill class because the “plaintiffs’ own model may well have rebutted” the *Basic* presumption. *BP* certified only a very narrow (post-spill) time period, based principally on the Supreme Court’s *Comcast* holding barring certification where damages cannot be measured on a class-wide basis. Defendants unsuccessfully argued a lack of linkage between some of the alleged corrective disclosures and alleged misstatements to attack plaintiffs’ class-wide damages model. In rejecting that argument, the court did not address price impact. The court also noted that “[s]ome of those [corrective] events are unequivocally connected to the alleged misrepresentations.” 2015 WL 5235010, \*7. Defendants here demonstrated that the sole alleged corrective disclosure on December 14, 2010 was not corrective of the challenged September 14, 2010 statements. *See App. Br. at 30-39.*

Respectfully,



Joseph M. McLaughlin

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