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MICHELLE M. NEWCOMER
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FOCUS AREAS

Securities Fraud

Corporate Governance & M+A

Consumer Protection

Data Privacy & Cyber Security

EDUCATION

Loyola University Maryland
B.B.A 2002

Villanova University School of Law
J.D. 2005

ADMISSIONS

Pennsylvania

New Jersey

United States Supreme Court

USCA, Second Circuit

USCA, Ninth Circuit

USCA, Tenth Circuit

USDC, District of New Jersey

USDC, District of Colorado

USDC, Eastern District of Pennsylvania

Michelle M. Newcomer is eDiscovery Counsel to the Firm. She focuses her practice on discovery issues, from preservation through production, and provides counsel to litigation teams across the Firm on matters arising in the Firm's securities, consumer, antitrust, and other complex actions. Michelle is adept and experienced in managing all aspects and phases of the discovery process. She regularly leads discovery conferences and negotiates protocols governing electronically stored information, and helps litigation teams navigate complex issues regarding the preservation, collection, search and production of electronically stored information, including developing effective technology-assisted review protocols. Michelle also briefs and argues discovery motions where necessary.

Michelle was appointed to the Sedona Conference Working Group (WG) 1 Steering Committee, which works to develop principles, guidance, and best practice recommendations for information governance and electronic discovery in the context of litigation, dispute resolution, and investigations. She also has served as a Faculty Advisory for Sedona's E-Discovery Negotiation & Training workshop, a panelist at various e-discovery conferences where she has helped shape the broader dialogue on e-discovery issues, and is an active member of the Complex Litigation e-Discovery Forum (CLEF), which provides educational and networking opportunities to practitioners in the plaintiffs' bar who handle complex cases.

Prior to serving in this role, Michelle focused her practice in the area of securities litigation, where she represented individual and institutional investors and Sovereign Wealth Funds in class actions,

direct actions, and non-U.S. collective actions asserting violations of U.S. and foreign securities laws. She has been involved in dozens of securities class actions in which the Firm has served as Lead or Co-Lead Counsel, through all aspects of pre-trial, trial, and appellate proceedings, and was part of the trial team in the Firm's most recent securities fraud class action trial, which resulted in a jury verdict on liability and damages in favor of investors.

Michelle began her legal career with the Firm in 2005. Prior to joining the Firm, she was a summer law clerk for the Hon. John T.J. Kelly, Jr. of the Pennsylvania Superior Court.

Current Cases

- General Electric Company

This securities fraud class action case arises out of alleged misrepresentations made by General Electric ("GE") and its former Chief Financial Officer, Jeffrey S. Bornstein (together, "Defendants"), regarding the use of factoring to conceal cash flow problems that existed within GE Power between March 2, 2015, and January 24, 2018 (the "Class Period").

GE Power is the largest business in GE's Industrials operating segment. The segment constructs and sells power plants, generators, and turbines, and also services such assets through long term service agreements ("LTSAs"). In the years leading up to the Class Period, as global demand for traditional power waned, so too did GE's sales of gas turbines and its customer's utilization of existing GE-serviced equipment. These declines drove down GE Power's earnings under its LTSAs associated with that equipment. This was because GE could only collect cash from customers when certain utilization levels were achieved or upon some occurrence within the LTSA, such as significant service work.

Plaintiffs allege that in an attempt to make up for these lost earnings, GE modified existing LTSAs to increase its profit margin and then utilized an accounting technique known as a "cumulative catch-up adjustment" to book immediate profits based on that higher margin. In most instances, GE recorded those cumulative catch-up earnings on its income statement long before it could actually invoice customers and collect cash under those agreements. This contributed to a growing gap between GE's recorded non-cash revenues (or "Contract Assets") and its industrial cash flows from operating activities ("Industrial CFOA").

In order to conceal this increasing disparity, Plaintiffs allege that GE increased its reliance on long-term receivables factoring (i.e., selling future receivables to GE Capital, GE's financing arm, or third parties for immediate cash). Through long-term factoring, GE pulled forward future cash flows, which it then reported as cash from operating activities ("CFOA"). GE relied on long-term factoring

to generate CFOA needed to reach publicly disclosed cash flow targets. Thus, in stark contrast to the true state of affairs within GE Power—and in violation of Item 303 of Regulation S-K—GE's Class Period financial statements did not disclose material facts regarding GE's factoring practices, the true extent of the cash flow problems that GE was attempting to conceal through receivables factoring, or the risks associated with GE's reliance on factoring.

Eventually, however, GE could no longer rely on this unsustainable practice to conceal its weak Industrial cash flows. As the truth was gradually revealed to investors—in the form of, among other things, disclosures of poor Industrial cash flows and massive reductions in Industrial CFOA guidance—GE's stock price plummeted, causing substantial harm to Plaintiffs and the Class.

In January 2021, the Court sustained Plaintiffs' claims based on allegations that GE failed to disclose material facts relating its practice of and reliance on factoring, in violation of Item 303, and affirmatively misled investors about the purpose of GE's factoring practices. In April 2022, following the completion of fact discovery, the Court granted Plaintiffs' motion for class certification, certifying a Class of investors who purchased or otherwise acquired GE common stock between February 29, 2016 and January 23, 2018. In that same order, the Court granted Plaintiffs' motion for leave to amend their complaint to pursue claims based on an additional false statement made by Defendant Bornstein. The Court had previously dismissed these claims but, upon reviewing Plaintiffs' motion—based on evidence obtained through discovery—permitted the claim to proceed.

On September 28, 2023, the Court entered an order denying Defendants' motion for summary judgment, sending Plaintiffs' claims to trial. In March 2024, the Court denied Defendants' motion for reconsideration of its summary judgment decision. With trial set to begin in November 2024, in October, the parties agreed to resolve the matter for $362.5 million, pending the Court's approval.

Read Fifth Amended Consolidated Class Action Complaint Here
Read Opinion and Order Granting and Denying in Part Motion to Dismiss Here
Read Order Granting Motion for Class Certification and for Leave to Amend Here
Click Here to Read the Class Notice
Read Opinion and Order Here (9/28/23)
Read Memorandum Opinion & Order Here (3/21/24)

Settled

- Pfizer, Inc.
  This securities fraud class action in Manhattan federal court arose out of Pfizer's concealment of clinical results for two arthritic pain drugs, Celebrex and Bextra. Despite being aware of significant cardiovascular adverse events in clinical trials,

Pfizer misrepresented the safety profile of the drugs until the U.S. Food & Drug Administration discontinued a key trial, forced the withdrawal of Bextra from the market, and issued an enhanced warning label for Celebrex. Following a summary judgment order dismissing the case several weeks before trial was set to begin, we successfully appealed the dismissal at the U.S. Court of Appeals for the Second Circuit and the case was remanded for trial.

After twelve years of litigation, the case resolved in 2016 with Pfizer agreeing to pay the shareholder class $486 million, the largest-ever securities fraud settlement against a pharmaceutical company in the Southern District of New York.

- Tenet Healthcare Corp.
  As co-lead counsel representing the State of New Jersey – Division of Investment, negotiated a groundbreaking multipart settlement in litigation arising from Tenet Healthcare's (Tenet) manipulation of the Medicare Outlier reimbursement system and related misrepresentations and omissions.
  The initial partial settlement included $215 million from Tenet, personal contributions totaling $1.5 million from two individual defendants—an unusual result in class action litigation—and numerous changes to the company's corporate governance practices. A second partial settlement of $65 million from Tenet's outside auditor, KPMG, addressed claims that it had provided false and misleading certifications of Tenet's financial statements. As a result of the settlement, various institutional rating entities now rank Tenet's corporate governance policies among the strongest in the United States.

News

- May 1, 2015 - Kessler Topaz Wins in Rare Securities Fraud Trial

- May 1, 2015 - Merck Vioxx Securities Litigation: Trial Approaches as the Court Finds Defendants' Opinion Statements Interpreting Scientific Data Actionable Under Omnicare

Speaking Engagements

- Dialogue Leader, Into the Breach: Law Firms and the Risk of Cybersecurity and Data Breaches, ASU-Arkfeld eDiscovery, Law and Technology Conference (*upcoming* March 2025)

- Dialogue Leader, Mobile Device Discovery: Challenges and Guidance, at the 2024 Sedona Conference Working Group 1 Midyear Meeting (April 2024)

- Dialogue Leader, Caselaw, Rules, and Policy Updates, Complex Litigation E-Discovery Forum Annual Meeting (March 2024)

- Dialogue Leader, ESI Case Law in 2023: Key Trends and Developments, 2023 Sedona Conference Working Group 1

Midyear Meeting (April 2023)

Awards/Rankings

- Pennsylvania Super Lawyers–Rising Star, 2012-2020

Memberships

- Member, The Sedona Conference Working Group 1 Steering Committee

- Member, Complex Litigation eDiscovery Forum (CLEF)