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FOCUS AREAS

Securities Fraud

Global Shareholder

Direct & Opt-Out

EDUCATION

Colgate University
A.B. 1989, *cum laude*

Fordham University School of Law
J.D. Dean's List, Fordham International Law Journal, 1994

ADMISSIONS

New York

Pennsylvania

USDC, Southern District of New York

USDC, Eastern District of New York

USDC, Eastern District of Pennsylvania

USDC, District of Colorado

USCA, Second Circuit

USCA, Third Circuit

USCA, Fourth Circuit

Johnston de Forest Whitman, Jr. (Jay) is a partner of the Firm, and his primary practice area is securities litigation.

Jay represents individual and institutional investors pursuing claims for securities fraud. In this capacity, Jay has helped clients obtain substantial recoveries in numerous class actions alleging claims under the federal securities laws, and has also assisted in obtaining favorable recoveries for institutional investors pursuing direct securities fraud claims.

Current Cases

- Acuity Brands, Inc.

CASE CAPTION	*In re Acuity Brands, Inc. Securities Litigation*
COURT	United States District Court for the Northern District of Georgia
CASE NUMBER	1:18-cv-02140-MHC
JUDGE	Honorable Mark H. Cohen
PLAINTIFF	Public Employees' Retirement System of Mississippi
DEFENDANTS	Acuity Brands, Inc., Vernon J.

USCA, Eleventh Circuit

Nagel, Richard K. Reece, & Mark A. Black

CLASS PERIOD

October 7, 2017 to April 3, 2017, inclusive

This securities fraud class action arises from Acuity's false and misleading statements regarding its ability to sustain the growth rate it experienced from 2010 to 2015.

From 2010 to 2015, Acuity experienced a rapid growth rate fueled by the recovery in non-residential construction following the 2008 financial crisis and a wide transition to LED lighting. Acuity's relationship with The Home Depot created a strong foundation for its extraordinary sales growth, as the Company experienced nine consecutive quarters of record growth. However, by the middle of 2015, competitive pressures in the lighting industry, including increased competition from overseas suppliers, lower LED prices, and a failure to break into the smart lighting solutions market, as well as a dramatic decline in sales to The Home Depot, slowed the Company's growth considerably. Acuity's investors were kept in the dark about all of these fundamental developments while the Defendants materially misrepresented Acuity's ability to maintain the growth rate that it experienced in the previous five years. Acuity's declining growth rate was revealed to the public gradually when the Company reported three consecutive quarters of below-expectation results. Acuity's stock prices deteriorated, causing massive losses to shareholders.

Plaintiff filed a Consolidated Amended Class Action Complaint on behalf of a putative class of investors, alleging that Acuity, Vernon Nagel, and Richard Reece violated Section 10(b) of the Exchange Act by making materially false and misleading statements regarding the growth rate of Acuity; and that Nagel, Reece, and Mark Black as controlling persons of Acuity violated Section 20(a) of the Exchange Act. On August 12, 2019, the United States District Court for the Northern District of Georgia granted in part and denied in part Defendants' motion to dismiss.

On August 25, 2020, Plaintiff's motion for class certification was granted, certifying the following class: "All persons who invested in the publicly traded common stock of Acuity Brands, Inc. between October 7, 2015, through April 3, 2017 (the 'Class Period') and were damaged thereby." The Court appointed Plaintiff, the Public Employees' Retirement System of Mississippi, as Class Representative; and Kessler Topaz Meltzer & Check and Labaton Sucharow as Class Counsel.

On December 2, 2021, Plaintiff filed a motion seeking preliminary approval of a $15.75 million dollar settlement to resolve all claims against Defendants. On December 23, 2021, the District Court

granted that motion, and scheduled the final approval hearing for June 3, 2022.
Read Consolidated Amended Class Action Complaint Here
Read Order Denying Motion to Dismiss Here
Read Order Granting Motion for Class Certification Here

- Campbell Soup Company

CASE CAPTION	*Marder v. Campbell Soup Company et al*
COURT	United States District Court for the District of New Jersey
CASE NUMBER	1:2018-cv-14385 (NLH)
JUDGE	Honorable Noel L. Hillman
PLAINTIFF	Oklahoma Firefighters Pension and Retirement System
DEFENDANTS	Campbell Soup Company, , Denise Morrison, and Anthony DiSilvestro
CLASS PERIOD	August 31, 2017 through May 17, 2018

This securities fraud class action case arises out of Defendants' materially misleading statements and omissions regarding Campbell's ability to deliver "profitable growth" in its fresh foods division, Campbell Fresh ("C-Fresh"), which included the Bolthouse Farms brand acquired by Campbell for $1.55 billion in 2012. During the Class Period, Defendants consistently provided fiscal 2018 ("FY 2018") growth projections for C-Fresh, including touting "product innovations" in the Bolthouse beverage business that Defendants claimed would drive profitability in C-Fresh. However, adverse facts known to Defendants, but concealed from investors, showed that growth in C-Fresh was unrealistic and unattainable. In reality, because of a nationwide beverage recall and associated production declines, leading into FY 2018 C-Fresh lost critical shelf space when its largest supermarket chain customers, including at least Target, Walmart, Kroger, and Albertsons, excluded Bolthouse products from their "Modular Resets," which are infrequent periodic shelf space allocations made by retailers to determine which products they will carry on store shelves until the next Modular Reset occurs, and replaced Bolthouse beverages with competitor products including Naked Juice (PepsiCo.), Odwalla Juice (Coca-Cola), Suja Juice and GT Kombucha. The exclusion of

Bolthouse products from the Modular Resets foreclosed valuable shelf space at, and associated revenues from, at least Target, Walmart, Kroger, and Albertsons, and made sales growth at these customers impossible in FY 2018.
Oklahoma Firefighters filed a 124-page amended complaint in January 2021 on behalf of a putative class of investors alleging that Campbell and its former executives, including CEO Denise Morrison and CFO Anthony DiSilvestro, violated Section 10(b) of the Securities Exchange Act by making false and misleading statements and concealing material facts about Campbell's ability to deliver "profitable growth" in C-Fresh and violated Item 303 of Regulation S-K by failing to disclose known material adverse trends which increased the risk of an impairment charge in the Bolthouse beverage business. As alleged, following the revelation that Campbell was taking a $619 million non-cash impairment charge on C-Fresh, with $514 million attributable to the Beverage and Salad Dressing unit, Campbell's stock price fell precipitously, causing significant losses and damages to the Company's investors. Defendants' motion to dismiss is fully briefed and pending before the Honorable Noel L. Hillman.
Read Second Amended Consolidated Class Action Complaint Here

- Goldman Sachs Group, Inc.

CASE CAPTION	*Sjunde AP-Fonden v. The Goldman Sachs Group, Inc. et al.*
COURT	United States District Court for the Southern District of New York
CASE NUMBER	1:18-cv-12084-VSB
JUDGE	Honorable Vernon S. Broderick
PLAINTIFF	Sjunde AP-Fonden ("AP7")
DEFENDANTS	The Goldman Sachs Group ("Goldman Sachs" or the "Company"), Lloyd C. Blankfein, Gary D. Cohn, and Harvey M. Schwartz
CLASS PERIOD	February 28, 2014 to December 20, 2018, inclusive

This securities fraud class action case arises out of Goldman Sachs'

role in the 1Malaysia Development Berhad ("1MDB") money laundering scandal, one of the largest financial frauds in recent memory.

In 2012 and 2013, Goldman served as the underwriter for 1MDB, the Malaysia state investment fund masterminded by financier Jho Low, in connection with three state-guaranteed bond offerings that raised over $6.5 billion. Goldman netted $600 million in fees for the three bond offerings—over 100 times the customary fee for comparable deals.

In concert with Goldman, Low and other conspirators including government officials from Malaysia, Saudi Arabia, and the United Arab Emirates ran an expansive bribery ring, siphoning $4.5 billion from the bond deals that Goldman peddled as investments for Malaysian state energy projects. In actuality, the deals were shell transactions used to facilitate the historic money laundering scheme. Nearly $700 million of the diverted funds ended up in the private bank account of Najib Razak, Malaysia's now-disgraced prime minister who was convicted for abuse of power in 2020. Other funds were funneled to Low and his associates and were used to buy luxury real estate in New York and Paris, super yachts, and even help finance the 2013 film "The Wolf of Wall Street."

AP7 filed a 200-page complaint in October 2019 on behalf of a putative class of investors alleging that Goldman and its former executives, including former CEO Lloyd Blankfein and former President Gary Cohn, violated Section 10(b) of the Securities Exchange Act by making false and misleading statements about Goldman's role in the 1MDB fraud. As alleged, when media reports began to surface about the collapse of 1MDB, Goldman denied any involvement in the criminal scheme. Simultaneously, Goldman misrepresented its risk controls and continued to falsely tout the robustness of its compliance measures. Following a series of revelations about investigations into allegations of money laundering and corruption at 1MDB, Goldman's stock price fell precipitously, causing significant losses and damages to the Company's investors.

In October 2020, the U.S. Department of Justice announced that Goldman's Malaysia subsidiary had pled guilty to violating the Foreign Corrupt Practices Act ("FCPA") which criminalizes the payment of bribes to foreign officials, and that Goldman had agreed to pay $2.9 billion pursuant to a deferred prosecution agreement. This amount includes the largest ever penalty under the FCPA.

On June 28, 2021, The Honorable Vernon S. Broderick of the U.S. District Court for the Southern District of New York sustained Plaintiffs' complaint in a 44-page published opinion. Plaintiffs moved for class certification in November 2021. That motion is fully briefed and pending before the Court. The case is in fact discovery.

Read Second Amended Class Action Complaint Here

Read Opinion and Order Granting and Denying in Part Motion to Dismiss Here

Read Motion for Class Certification Here

- Walgreen Co.

CASE CAPTION	*Washtenaw County Employees' Retirement System v Walgreen Co., et al.*
COURT	United States District Court for the Northern District of Illinois
CASE NUMBER	1:15-cv-03187
JUDGE	Honorable Sharon Johnson Coleman
PLAINTIFF	Industriens Pensionsforsikring A/S ("Industriens")
DEFENDANTS	Walgreen Co. ("Walgreen" or the "Company"), Gregory D. Wasson, and Wade Miquelon
CLASS PERIOD	March 25, 2014 through August 5, 2014, inclusive

This securities fraud class action case arises out of Defendants' representations and omissions regarding Walgreen's highly publicized earnings target of $9 billion to $9.5 billion for fiscal year 2016 (the "FY16 target") and the negative impact of hyperinflation in generic drug prices ("generic inflation") combined with unfavorable reimbursement contracts that caused significant reductions in Walgreen's gross margins and earnings. During the Class Period, Defendants repeatedly reaffirmed the FY16 target and represented that Walgreen was seeing "nothing unusual" with respect to generic inflation or reimbursement pressure. Plaintiff alleges that unbeknownst to investors, the systemic shift to generic inflation caused a catastrophic impact on Walgreen's earnings and profitability because it was "locked up" in multi-year contracts with lower reimbursement rates that did not protect against generic inflation.

Industriens filed a 124-page complaint in August 2015 on behalf of a proposed class of investors alleging that Walgreen and its former executives, CEO Greg Wasson and CFO Wade Miquelon, violated Section 10(b) of the Securities Exchange Act by making false and misleading statements and concealing material facts about the magnitude and severity of generic inflation and reimbursement pressure and the combined impact on Walgreens' margins and

profitability, including the FY16 target. As alleged, following Walgreens' disclosure of a $2 billion shortfall to its FY16 EBIT target as a direct result of generic inflation and reimbursement pressure, Walgreens's stock price fell precipitously, causing significant losses and damages to the Company's investors.
In September 2016, the Honorable Sharon Johnson Coleman issued an order denying in part Defendants' motion to dismiss. In March 2018, Judge Coleman certified the case as a class action. Following Industriens's amendment of the complaint in December 2018, Judge Coleman issued an order in September 2019 denying in part Defendants' renewed motion to dismiss. The order held that Plaintiff's amended complaint adequately alleged several additional false and misleading statements and omissions, including statements regarding the FY16 target and the negative impact of generic inflation and reimbursement pressure on the Company's performance.
On November 2, 2021, the Court issued a Memorandum and Opinion and Order denying in large part Defendants' motion for summary judgment, clearing the case to proceed to trial.
Read First Amended Consolidated Complaint Here
Read WCERS v. Walgreen Opinion and Order Granting Class Certification Here
Read WCERS v. Walgreen Opinion and Order Granting Motion to Dismiss
Read WCERS v. Walgreen Opinion and Order Granting Motions for Summary Judgement Here

Settled

- J.P. Morgan Chase & Co.

This securities fraud class action in the United States District Court for the Southern District of New York stemmed from the "London Whale" derivatives trading scandal at JPMorgan Chase. Shareholders alleged that JPMorgan concealed the high-risk, proprietary trading activities of the investment bank's Chief Investment Office, including the highly volatile, synthetic credit portfolio linked to trader Bruno Iksil—a.k.a., the "London Whale"—which caused a $6.2 billion loss in a matter of weeks. Shareholders accused JPMorgan of falsely downplaying media reports of the synthetic portfolio, including on an April 2012 conference call when JPMorgan CEO Jamie Dimon dismissed these reports as a "tempest in a teapot," when in fact, the portfolio's losses were swelling as a result of the bank's failed oversight.

This case was resolved in 2015 for $150 million, following U.S. District Judge George B. Daniels' order certifying the class, representing a significant victory for investors.

News

- May 8, 2017 - Kessler Topaz Again Named Class Action

Litigation Department of the Year by The Legal Intelligencer

- Kessler Topaz Secures a $150 Million Recovery for Shareholders in JPMorgan Chase & Co. Securities Class Action