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Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System: Defendants' Second Line Of Defense In Securities Class Actions

By
Douglas W. Greene
and
Zachary R. Taylor

BakerHostetler
New York, NY

and

Carla Caliendo

Sompo International
New York, NY

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Commentary

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[Editor's Note: Douglas W. Greene is a partner with law firm BakerHostetler. He is based in New York and is leader of its Securities & Governance Litigation Team. Zachary R. Taylor is a partner with BakerHostetler. He is based in New York and a member of its Securities & Governance Litigation Team. Carla Caliendo is Vice President and Head of D&O Claims with Sompo International. She is based in New York. Any commentary or opinions do not reflect the opinions of BakerHostetler, Sompo International or LexisNexis®, Mealey Publications™. Copyright © 2026 Douglas W. Greene, Carla Caliendo and Zachary R. Taylor. Responses are welcome.]

Introduction

Defense counsel and D&O insurers have seen a troubling rise in a particularly frustrating strain of securities class actions over the past decade. The plaintiff's bar has increasingly been filing securities cases that attack issuers' broad and often generic statements about their business, claiming that they were fraudulent in light of specific subsequent negative developments. A subset of these is the so-called event-driven securities class action. Given that every company will, at some point, experience some sort of challenge or setback, this strain of securities class action complaint is particularly concerning.

To be sure, broad-statement securities class actions typically face significant hurdles at the motion to dismiss stage. Often, these prior broad statements are statements of opinion subject to the high substantive standard for falsity under *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, 575 U.S. 175 (2015). In *Omnicare*, the Supreme Court raised the bar for showing the falsity of a defendant's statement of opinion: For a statement of opinion to be false or misleading under *Omnicare*, a plaintiff must do more than allege that it turned out to be incorrect: he must plead (1) facts sufficient to show that the speaker did not actually hold the stated belief at the time the statement was made; or (2) "particular (and material) facts going to the basis for the issuer's opinion . . . whose omission makes the opinion statement at issue misleading to a reasonable person reading the statement fairly and in context." 575 U.S. at 188-89, 194.

Omnicare is a powerful tool to contest the falsity of the alleged misrepresentations on a motion to dismiss (and beyond). Since *Omnicare*, courts have found broad statements concerning, among other things, a company's current operational and future performance,[1] financial statements and internal controls,[2] and compliance with laws and regulations,[3] to be statements of opinion under the securities laws. For instance, in *Strezsak v. Ardelyx Inc.*, 2024 U.S. Dist. LEXIS 47461, 2024 WL 1160900, at *5 (N.D. Cal. Mar. 18, 2024), the court found defendants' statements that interactions with the FDA "have gone exceedingly well," and descriptions of "successful" clinical trials, to be statements of opinion, and that plaintiffs failed to plead any facts that rendered the statements false. Similarly, in *In re Diebold Nixdorf, Inc., Securities Litigation*, 2021 U.S. Dist. LEXIS

62449, 2021 WL 1226627, at *9-10 (S.D.N.Y. Mar. 30, 2021), the court concluded that the defendants' statements describing the company's "excellence" in finance, operations, and sales, and "confidence" in a merger, were statements of opinion that plaintiffs did not adequately plead were false.

Yet some complaints that allege opinion misrepresentations still manage to survive.[4] But that should not mean that defense counsel should either march along into the burdensome, expensive, and often contentious discovery process or throw up the white flag of surrender and settle. Defense counsel should be prepared to immediately deliver a second wave of attack to knock out such claims at class certification utilizing the Supreme Court decision in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 594 U.S. 113 (2021).

Goldman provides defense counsel with a way to defeat a securities class action as a *class* action by attacking the "back-end" of a complaint's allegations, i.e., by analyzing whether the later disclosed adverse event (i.e., the alleged "corrective disclosure") was sufficiently related to the prior alleged misrepresentation. Where there is a "mismatch" between the nature, contents, and/or subject matter of the alleged misrepresentation and the alleged corrective disclosure, a plaintiff may not be able to establish reliance at class certification, which would strip the case of its class action status and virtually eliminate defendants' and D&O insurers' financial exposure to such claims.[5]

Given the one-two punch *Omnicare* and *Goldman* afford defendants in securities class actions, defense counsel should be prepared from the outset of the case to analyze and develop the strength of its arguments at class certification should the case proceed past the motion to dismiss stage. Further, defense counsel should seek to brief class certification early on and stay discovery (or at least limit discovery to class discovery) pending resolution of class certification.[6]

The Supreme Court Decision in *Goldman*

The claims in *Goldman* arose around the time of the Great Recession. At issue in that case were certain alleged conflicts of interest that existed for a series of transactions in collateralized debt obligations ("CDO") involving subprime mortgages.[7] Goldman allegedly marketed the CDO transactions as "ordinary asset-backed securities, through which investors could buy shares in bundles of mortgages and that investors, and presumably Goldman, hoped would succeed."[8] However, Goldman purportedly allowed an outside hedge fund, Paulson & Co., to play an active role in selecting the mortgages that constituted the CDOs, and Paulson was actively betting against those investments through short sales.[9] Goldman had not publicly disclosed Paulson's involvement in the mortgage portfolio selection for the CDOs.[10]

The *Goldman* plaintiff alleged that Goldman's stock price declined on the news of three government enforcement actions related to the CDO transactions and that they revealed the falsity of Goldman's prior broad statements concerning its controls for conflicts of interest generally and the company's integrity.[11] Representative examples of some the alleged misrepresentations, which are statements common to issuers in their SEC filings and elsewhere, included:

- "Our reputation is one of our most important assets. As we have expanded the scope of our business and our client base, we increasingly have to address potential conflicts of interest, including situations where our services to a particular client or our own proprietary investments or other interests conflict, or are perceived to conflict, with the interest of another client . . . ."

- "We have extensive procedures and controls that are designed to identify and address conflicts of interest . . . ."

- "Our clients' interests always come first. Our experience shows that if we serve our clients well, our own success will follow . . . ."

- "We are dedicated to complying fully with the letter and spirit of the laws, rules and ethical principles that govern us. Our continued success depends upon unswerving adherence to this standard . . . ."

- "Most importantly, and the basic reason for our success, is our extraordinary focus on our clients . . . ."

- "Integrity and honesty are at the heart of our business."[12]

Having successfully defeated the motion to dismiss, the parties entered discovery and class certification briefing. The district court certified the class and after a near decade long series of appeals, the class certification issue reached the Supreme Court.

At issue in the *Goldman* decision was whether the shareholders were entitled to the fraud-on-the-market presumption of reliance under *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), at class certification. The fraud-on-the-market theory asserts "that an investor presumptively relies on a misrepresentation so long as it was reflected in the market price at the time of his transaction."[13] At class certification, a defendant may rebut the *Basic* presumption of reliance by showing that the alleged misrepresentations had no impact on the stock price.[14] "Any showing that severs the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff, or his decision to trade at a fair market price, will be sufficient to rebut the presumption of reliance."[15]

In *Goldman*, the plaintiff asserted that the alleged misrepresentations maintained an artificial inflation in the stock price for years, which was exposed and dissipated on the announcements of the corrective disclosures described above.[16] This is commonly known as a "price maintenance" theory of price impact. Under a price maintenance theory, the artificial inflation embedded in a company's stock price at the beginning of the class period can be shown through the "back-end" stock price decline attributed to the corrective disclosures.[17] In other words, "the misrepresentation prevents preexisting inflation in a stock price from dissipating, but does not cause a price uptick. Instead, the back-end price drop—what happens when the truth is finally disclosed—operates as an indirect proxy for the front-end inflation, or the amount that the misrepresentation fraudulently propped up the stock price. Simply put, the theory goes: back-end price drop equals front-end inflation."[18]

By showing such embedded artificial inflation at the beginning of the class period, a plaintiff may invoke the *Basic* presumption of reliance at class certification based on a price-maintenance theory.[19]

Goldman argued that there was a "mismatch" between the alleged misrepresentations—general and generic statements—and the alleged corrective disclosures—specific events—such that any stock price drops attributable to the corrective disclosures did not support an inference that the alleged misrepresentations caused any embedded artificial inflation. In other words, by "severing the link" between the alleged corrective disclosures that revealed the alleged artificial inflation, and the alleged misrepresentations that purportedly caused said artificial inflation, plaintiff could not establish that it had relied on the alleged misrepresentations (which would have had no impact on Goldman's stock price) under the *Basic* presumption.

The Supreme Court agreed with this principle[20] and explained that evidence of a "mismatch" between an alleged corrective disclosure and an alleged misrepresentation is relevant evidence to rebut the *Basic* presumption of reliance. The Court explained that:

> [The] inference that the back-end price drop equals front-end inflation [] starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure. That may occur when the earlier misrepresentation is generic (e.g., "we have faith in our business model") and the later corrective disclosure is specific (e.g., "our fourth quarter earnings did not meet expectations"). Under those circumstances, it is less likely that the specific disclosure actually corrected the generic misrepresentation, which means that there is less reason to infer front-end price inflation—that is, price impact—from the back-end price drop.[21]

Directly at issue in *Goldman* was the "mismatch" between generic alleged misrepresentations and specific corrective disclosures. But the Court did not limit the "mismatch" principle to such statements. As a general matter, the "inference that the back-end price drop equals front-end inflation [] starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure."[22] Accordingly, if the connection between the alleged misrepresentations and alleged corrective disclosures is too attenuated, there should be strong grounds for rebutting the presumption of reliance.

The Second Circuit Remands in *Goldman*

After the Supreme Court remanded the case to the Second Circuit, the Second Circuit remanded the case to the district court because it was "unclear whether the district court considered the generic nature of Goldman's alleged misrepresentations" as required under the Supreme Court's decision.[23]

On remand, the district court again certified the class after determining that the alleged misrepresentations were not sufficiently generic as to establish a sufficient mismatch to rebut the *Basic* presumption.[24]

On appeal, the Second Circuit reversed the district court's decision and remanded with instructions to decertify the class. The Second Circuit elaborated on the principle set forth in *Goldman* as follows:

> [W]hat happens when the match between the contents of the price-propping misrepresentation and the truth-revealing corrective disclosure is tenuous? Consider two examples. In the first, an automobile manufacturer's earlier statement to the market that its best-selling vehicle passed all safety tests is followed by later news that, in fact, the car failed several crash tests. A price drop follows. There, the earlier statement is precisely negated, or rendered false, by the later news—a clean match. In the second example, however, the same back-end news (and the same price drop) is instead preceded by the manufacturer's statement to the market that it strives to ensure that all its vehicles are road-ready, that it has an elaborate testing protocol to that effect, but that [] task is tall, the goal difficult to achieve. There, it is less apparent the market would understand the later news of failed crash tests revealed that, in fact, there was no protocol, or that, in fact, the manufacturer did not seek to make its automobiles safe to drive. The match between the more specific "corrective disclosure" and the earlier, more generic statement is on shakier ground.[25]

Based on this analysis, in part, the Second Circuit held that Goldman's alleged misrepresentations as to its business principles (e.g., statements such as "integrity and honesty are at the heart of our business") were too generic to support an inference of price impact based on the stock price drop following the alleged corrective disclosures of specific government investigations into the allegedly conflicted transactions.[26]

With regard to Goldman's generic statements as to how it addressed conflicts of interest, the Second Circuit concluded that the alleged corrective disclosures were insufficiently linked to the alleged misrepresentations. The Second Circuit distinguished *Goldman* from its prior decision in *Waggoner v. Barclays PLC*, 875 F.3d 79 (2d Cir. 2017) where the alleged corrective disclosures "expressly identified" the alleged misrepresentations.[27] The Second Circuit also distinguished *Goldman* from its prior decision in *In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223 (2d Cir. 2016), where the Second Circuit explained that a front-end price impact of a generic disclosure can established if there is sufficient evidence to infer that there would have been a negative stock price reaction had the company spoken truthfully at the time of the alleged misrepresentation but "*at an equally generic level*."[28] The Second Circuit explained that, in line with *Goldman*, there cannot be a presumption that the market relied on the generic alleged misrepresentation unless it would have also reacted negatively to an equally generic negative disclosure had it been disclosed.[29] Because the alleged corrective disclosures in *Goldman* described the "details and severity" of Goldman's alleged conduct, that presented a generic-specific "mismatch" sufficient to rebut the presumption of reliance.[30]

District Court Decisions Based on *Goldman*

Not many courts have opined on the *Goldman* mismatch principle, and the majority of those that have did not find the mismatch sufficient to rebut the *Basic* presumption. It is worth noting however, that these many of these decisions rely heavily on pre-*Goldman* precedent in assessing price impact. Arguably, some of these decisions reflect the same errors found in the district court decision in *Goldman*, which, as noted, has since been reversed.

However, several recent decisions demonstrate that courts may be starting to catch on to the logic underlying *Goldman* and denying (in full or in part) class certification on a sufficient showing of mismatch between the alleged misrepresentations and alleged corrective disclosures:

- In *Ferris v. Wynn Resorts Ltd.*, 2023 U.S. Dist. LEXIS 35374, 2023 WL 2337364, at *11 (D. Nev. Mar. 1, 2023), the court found that the issuer's (a resort casino company) announcement that it had dismissed the law firm it had retained to investigate sexual and other misconduct allegations was "not matched" to the alleged misrepresentations, which concerned the defendants' denials of said misconduct. The court concluded that "[t]he plaintiff class therefore may not proceed on this allegation as a corrective disclosure." *Id.*

- In *In re Qualcomm Inc. Sec. Litig.*, 2023 U.S. Dist. LEXIS 47016, 2023 WL 2583306, at *12 (S.D. Cal. Mar. 20, 2023), the court found a mismatch between the issuer's (a technology company that owns patents for components inside cell phones and other devices) statements concerning its "broad," "fair," "reasonable," and "non-discriminatory" licensing practices, and the alleged corrective disclosures that allegedly revealed that the issuer did not license chips. The court refused to certify a class with respect to the licensing-related alleged misrepresentations.

- In *In re Apache Corp. Sec. Litig.*, 2024 U.S. Dist. LEXIS 23001, 2024 WL 532315, at *7 (S.D. Tex. Feb. 9, 2024), the court found a mismatch between the issuer's (an oil company) alleged misrepresentations concerning the attributes, performance, and prospects of a particular oil field and the alleged corrective disclosures that the head geologist at the oil field resigned, and that the company was temporarily deferring the oil field's production given continuing low oil prices. The court granted in part and denied in part the motion for class certification.

- In *In re Kirkland Lake Gold Ltd. Sec. Litig.*, 2024 U.S. Dist. LEXIS 59981, 2024 WL 1342800, at *8 (S.D.N.Y. Mar. 29, 2024), the court found a mismatch between the issuer's (a mining company) alleged misrepresentations concerning the company's focus and preference for internal growth "instead of going out and trying to buy [a] company," and the alleged corrective disclosure of the company's acquisition of a mine from another company. The court denied class certification.

- In *Sjunde AP-Fonden v. Goldman Sachs Grp., Inc.*, 2024 U.S. Dist. LEXIS 64060, 2024 WL 1497110, at *4, 16-17 (S.D.N.Y. Apr. 5, 2024), a case related to the 1MDB scandal, the magistrate judge found a mismatch between the issuer's (Goldman) alleged misrepresentations that Goldman did not receive "fees or commissions" from 1MDB, that Goldman "had no visibility" into 1MDB's diversion of funds, and that "Jho Low [the creator of the 1MDB fund]" was not a client of Goldman, and the alleged corrective disclosures that Goldman's CEO had met with Jho Low in 2013. The magistrate judge issued a report and recommendation denying class certification as to those alleged misrepresentations, and the district court adopted the report in full. *See Sjunde AP-Fonden v. Goldman Sachs Grp., Inc.*, 798 F. Supp. 3d 416, 468 (S.D.N.Y. 2025).

- In *Shupe v. Rocket Companies, Inc.*, 2024 U.S. Dist. LEXIS 177472, 2024 WL 4349172, at *24-26 (E.D. Mich. Sept. 30, 2024), the court found a mismatch between the issuer's (a real estate financial services company) alleged misrepresentations that it saw "strong consumer demand" and an "opportunity" to invest as interest rates rose, that certain of its networks were "growing," and that it "takes" rising interest rates as an "opportunity to grow market share," and the alleged corrective disclosures of the issuer's low "closed loan volume," "net rate lock volume," and "gain on sale margins." The court determined that there was a mismatch between the generic alleged misrepresentations and the specific alleged corrective disclosures following *Goldman*'s guidance. The court also noted that defendants' expert testimony demonstrating that "no analyst referenced" the alleged misrepresentations "in reports issued throughout the class period" was "fatal" to plaintiffs' claim that the alleged misrepresentations impacted the issuer's stock price. The court denied class certification.

- In *In re Concho Res., Inc.*, 2025 U.S. Dist. LEXIS 66272, 2025 WL 1040379, at *10-17 (S.D. Tex. Apr. 7, 2025), the court found a generic-specific mismatch between the issuer's (an oil company) specific alleged corrective disclosure reporting "substandard second quarter 2019 financial results" and lowering oil production guidance, and generic alleged misrepresentations, including that: (1) "Our operational and financial performance demonstrated our ability to consistently execute, control costs and capitalize on opportunities that strengthen our competitive position."; (2) "High quality acreage and scale within the Permian Basic enables Concho to efficiently allocate capital while continuing to advance manufacturing style development with leading-edge drilling and completion techniques."; (3) "Concho is collecting valuable data that helps the Company optimize lateral placement, completion design and facilitates planning."; (4) "Our strategy allows us to adapt quickly."; (5) "We believe this type of [large-scale] development is important to maximize recoveries, drive economies of scale and deliver attractive economic returns predictably and consistently over the long term."; (6) "[T]he allocation of capital is probably the most important thing that our team does and the most important thing that we do that creates success for the company. That's what drives our production growth and free cash flow. Also, we run a very large and stable ship. This allows us to balance risk and kind of plow through the volatility of our business."; (7) "I think the drilling side of our business is one of the best parts of our business. And I think the way we have approached that in the past will continue." (8) "[B]y drilling longer laterals and the spacing we're using, the efficiency and all that, you can get a whole lot more done."; (9) "[T]hese large- scale projects, they really emphasize planning and planning ahead. And our team has done a good job of that."

  The court also found a subject matter mismatch between the alleged corrective disclosure and other alleged misrepresentations because the alleged misrepresentations did not "pertain to the financial results for the second quarter of 2019." These categories of alleged misrepresentations included: (1) "[L] arge-scale projects . . . . [are] very dispersed amongst our asset base."; (2) "[W]e've been building up to this kind of larger-scale development mode, and we're very excited about what we're seeing."; (3) "The 2018 capital program is expected to be funded with cash flows from operations and generate 20% crude oil growth and 16% to 20% total production growth year-over-year."; (4) "Concho expects to grow total production at a compound annual growth rate of 20% from 2017 to 2020. The outlook reflects the Company's high-quality production base and strong operating momentum."; and (5) "In addition to our size, scale and execution strength provided us with the unique ability to capitalize on [] new complementary assets."

- In *Gambrill v. CS Disco, Inc.*, 2025 U.S. Dist. LEXIS 259789, 2025 WL 3771433, at *7-13 (W.D. Tex. Dec. 16, 2025), the magistrate judge recommended denial of class certification based on the "mismatch" between the alleged corrective disclosures related to issuer's (an e-discovery services provider) revised 2022 guidance, and the alleged misrepresentations that concerned: (1) "growth of usage [of the issuer's product] by one client"; (2) "the general adoption of [the issuer's] services by typical clients"; and (3) "the expectation that as [the issuer] grows, fluctuations in usage by any one client will become less impactful." The magistrate judge found both a subject matter and a generic-specific mismatch. *Id.* at *11 ("Defendants have demonstrated that the Alleged Corrective Disclosures do not sufficiently match [the]Alleged Misrepresentations. The court's comparison reveals too great a distance between the content of what the statements discussed. . . . The comparison also reveals too great a distinction in the specificity of the matters discussed.").

- In *In re NVIDIA Corp. Sec. Litig.*, 2026 U.S. Dist. LEXIS 63927, 2026 WL 821418, at *19-22 (N.D. Cal. Mar. 25, 2026), the court found a subject matter mismatch between certain of the issuer's (a multinational technology company) alleged misrepresentations—which stated that "sales of [the issuer's] products to cryptocurrency miners were insignificant" and that the issuer's "cryptocurrency-related revenues were contained primarily in the [issuer's Original Equipment Manufacturer & IP] segment" rather than its Gaming segment—and the alleged corrective disclosures where the issuer disclosed a "lack of cryptocurrency revenue in the future earnings forecast" and an "increase in balance sheet inventory."

- In *In re Enovix Corp. Sec. Litig.*, 2026 U.S. Dist. LEXIS 87945, 2026 WL 1078569, at *8-13 (N.D. Cal. Apr. 21, 2026), the court denied class certification after finding a mismatch between the issuer's (an early-stage technology company that makes a new type of lithium-ion battery) alleged misrepresentations that allegedly concealed that certain Chinese equipment used in the issuer's production factory failed to pass Factory Acceptance Tests, and the alleged corrective disclosures which revealed the failure of the production factory "broadly speaking."

Recent Developments in the Third Circuit – *San Diego Cnty. Emps. Ret. Ass'n v. Johnson & Johnson, et al.*

In *Hall v. Johnson & Johnson*, 2026 U.S. Dist. LEXIS 87945, 2023 WL 9017023 (D.N.J. Dec. 29, 2023), the class action plaintiff alleged that Johnson & Johnson made false or misleading statements designed to "conceal the truth from investors that the Company's talc products were contaminated with asbestos."[31] The class action plaintiff alleged that the alleged "truth regarding asbestos in the Talc Products was slowly disclosed" through five alleged corrective disclosures: (1) a September 21, 2017 press release issued by the law firm Bernstein Liebhard entitled "Talcum Powder Lawsuit Plaintiffs Claim Unsealed Documents Show Johnson & Johnson Knew of Talc-Asbestos Danger in 1970s, Bernstein Liebhard Reports," which reported a "new development" that "plaintiffs in ovarian cancer lawsuits throughout the country were looking to add asbestos allegations"; (2) January 30, 2018 testimony from a plaintiff in a New Jersey state court case that he "developed mesothelioma as a result of exposure to J&J Baby Powder containing asbestos," and a Law360 article reporting the same; (3) a February 5, 2018 Mesothelioma.net article which "anticipat[ed] use of 'damaging internal company documents'" in the New Jersey case, and a February 7, 2018 press release from law firm Beasley Allen stating that the lawsuits against Johnson & Johnson were exposing "'never-before-seen documents' about asbestos in baby powder"; (4) a July 12, 2018 $4.69 billion jury verdict in Missouri where plaintiffs alleged that "their ovarian cancer was caused by asbestos in the Talc Products"; and (5) a December 14, 2018 *Reuters* article entitled "Powder Keg: Johnson & Johnson knew for decades that asbestos lurked in its Baby Powder."[32]

The class action defendants opposed class certification primarily on the theory that the alleged corrective disclosures did not constitute "new" information[33] because the allegations and litigations regarding asbestos in Johnson & Johnson talc products were already well-known to the market, and thus the alleged corrective disclosures could not have caused the class action plaintiff's losses.[34] The class action defendants also asserted that there was a mismatch between the alleged corrective disclosures and the alleged misrepresentations, including: (1) the 2017 Bernstein Liebhard press release did not match any alleged misstatement because "Plaintiff does not (and could not) claim that J&J concealed that ovarian cancer patients 'planned to include' asbestos related claims"; (2) the July 2018 verdict did not match the alleged misstatements because "Plaintiff does not allege that Defendants concealed the risk of large adverse verdicts in talc cases"; (3) "Plaintiff argued that the [2018] Reuters article disclosed for the first time that 'J&J has *never* adopted a concentration method for preparing talc samples before asbestos testing,'" but "J&J never said it used concentration testing and was not required to"; and (4) the 2018 Reuter's article's quoting of the "personal opinions" of a "former New York City environmental protection chief" who learned of the jury verdict and stated "[h]ow come it took so long?," and a plaintiffs' lawyer who stated that "the documents J&J [allegedly] withheld from [his client] would have made a 100% difference for his client," did "not match any alleged misstatement."[35]

In granting the motion for class certification, the district court did not address the class action defendants' *Goldman* "mismatch" arguments, concluding that "the Court need not determine whether the disclosures are corrective at this stage."[36] The class action defendants appealed the district court decision to the Third Circuit Court of Appeals, arguing, in part, that the district court erred in "refusing even to decide whether the alleged corrective disclosures were even corrective," which "contradicts *Goldman*, which held that the issue must be addressed before a class is certified."[37] The class action plaintiff opposed the appeal, arguing that: (1) any *Goldman* concern is "absent here, where Defendants' misstatements concerning asbestos in J&J talc products were pointed and specific—and definitively linked with the contrary disclosures"; and (2) "[t]he district court correctly noted it didn't have to consider loss causation at the class-certification stage [], and elsewhere reiterated that '[a]gain, . . . the Court need not determine whether the disclosures are corrective at this stage."[38]

In a 2-1 decision, the Third Circuit affirmed the district court's order certifying the class. In its decision, the majority only stated the following regarding the class action defendants' *Goldman* arguments:

> [W]e observe that each disclosure contained information relating to J&J's alleged misrepresentations concerning the presence of asbestos in its talc product, its commitment to safety, or its potential asbestos-related liability. Thus, unlike in *Goldman*, . . . there is no mismatch between the subject of the alleged misrepresentation and the content of the disclosures. Therefore, market reaction to the disclosures is capable of shedding light on the price impact of the alleged misrepresentations.[39]

In the dissent, Judge Chung opined that he would vacate the district court order and remand for further proceedings, specifically because "the District Court did not assess evidence introduced by J&J showing that the disclosures did not contain newly public information and were not corrective," and "[a]bsent such findings, it is impossible to determine whether the District Court clearly erred in concluding that J&J failed to show that the disclosures had 'price impact,' and thus failed to rebut *Basic*'s presumption of reliance."[40]

The class action defendants sought appeal of the Third Circuit decision to the Supreme Court, but the Supreme Court denied certiorari.

Recent Developments in the Ninth Circuit – *Jaeger v. Zillow Group, et al.*

In *Jaeger v. Zillow Group, Inc., et al.*, 746 F. Supp. 3d 1025 (W.D. Wash. Aug. 23, 2024), the class action defendants sought to rebut the *Basic* presumption and defeat class certification based on *Goldman*'s mismatch guidance. Zillow operates several real estate websites and, in 2018, launched its "Zillow Offers" business in which Zillow purchased homes directly from sellers, performed renovations, and resold the homes for small profit margins.[41] The class action plaintiff alleged two categories of alleged misrepresentations: (1) statements of optimism related to the strengthening of Zillow's pricing models in connection with its Zillow Offers business;[42] and (2) statements regarding the durability of certain operational, unit economic, and/or renovation process improvements.[43] Plaintiff alleged that the first category of alleged misrepresentations was false or misleading because Zillow allegedly concealed its use of "gross pricing overlays" in setting prices, that these overlays were what created demand, and thus Zillow was not in fact strengthening its pricing models. Plaintiff alleged that the second category of alleged misrepresentations were false or misleading because Zillow allegedly concealed its reduction in the scope and pricing of renovations.

Plaintiff alleged that the falsity of these disclosures was revealed through four alleged corrective disclosures: (1) an October 4, 2021 analyst report stating that Zillow appeared to have too much inventory that it bought "at too high a price"; (2) an October 17, 2021 news article reporting that Zillow Offers was pausing new home acquisitions, which Zillow later confirmed in an October 18, 2021 press release as being due to a "backlog in renovations and operational capacity constraints"; (3) an October 31, 2021 analyst report and a November 1, 2021 news article stating that 66% of Zillow's homes were for sale below their purchase price and that Zillow planned to divest approximately 7,000 homes; and (4) Zillow's November 2, 2021 earnings call announcing it was writing down over $500 million in home inventory and winding down Zillow Offers because the housing market was too volatile for Zillow's pricing projections.[44]

The Zillow defendants opposed class certification, arguing that there was a mismatch between the alleged misrepresentations and the alleged corrective disclosures because none of the alleged corrective disclosures actually revealed the allegedly concealed information, i.e., Zillow's use of pricing overlays and its reductions to the scope and pricing of renovations. The district court rejected this argument, concluding that: (1) the October 17-18, 2021 disclosures regarding the pause in new acquisitions due to inventory backlog "render[ed] some aspect of [Zillow's] prior statements false or misleading" because plaintiff had alleged that Zillow's inventory backlog was caused by the overlay pricing model and inability to renovate houses; (2) the October 31 and November 1, 2021 disclosures that Zillow was selling homes below their purchase price and divested 7,000 homes revealed the prior pricing statements to be false or misleading because plaintiff alleged that overpayments for houses were a result of Zillow's overlay pricing model; and (3) the November 2, 2021 earnings call's disclosure that Zillow's pricing model would not be able to accurately forecast future home prices rendered its prior statements regarding the strength of Zillow's pricing model false or misleading.[45]

In January 2025, the defendants appealed the class certification decision to the Ninth Circuit. On September 26, 2025, in a two-page unpublished order,[46] the Ninth Circuit affirmed the district court's decision, concluding that: "The back-end disclosures [] revealed new information about how Zillow's home-pricing struggles threatened the business and suggested that its earlier statements may have obscured how Zillow's pricing model misfired. Zillow's front-end and back-end statements are matched enough under *Goldman*." *Jaeger v. Zillow Grp., Inc.*, 2025 U.S. App. LEXIS 24977, 2025 WL 2741642, at *2 (9th Cir. Sept. 26, 2025).

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While *Johnson & Johnson* and *Zillow* represent that some courts will still find a sufficient match where the alleged corrective disclosures concern the same general subject matter as the alleged misrepresentations, courts are increasingly scrutinizing the substantive match (or mismatch) between alleged misrepresentations and alleged corrective disclosures following *Goldman*, including in the Ninth Circuit following the *Zillow* decision,[47] as discussed above.

Goldman as a Tool for Defense Counsel

Too often, after the filing of a case, defense counsel devotes its exclusive attention to the motion to dismiss process. Once a court denies a motion to dismiss—sometimes years after the initial complaint is filed—defense counsel enter into settlement discussions, and/or enter discovery mode and negotiate a case schedule that puts off class certification for many months. During that time, defendants and their D&O insurers are burdened with the enormous burden and expense of discovery in securities class actions, and any settlement analyses or valuations are determined based on what the expected damages would be at trial.

That classic way of doing things overlooks the opportunity to virtually defeat such cases under *Goldman*, which provides added protection for cases involving broad statements of opinion under *Omnicare* as well as broad and/or generic statements of fact.[48] Indeed, the example cited by the Supreme Court in *Goldman* itself demonstrates a mismatch between a broad alleged misrepresentation of opinion ("we have faith in our business model") and a specific corrective disclosure ("our fourth quarter earnings did not meet expectations").[49] That alleged misrepresentations are often broader in scope than the alleged corrective disclosures should incentivize defense counsel to utilize *Goldman* to rebut the *Basic* presumption of reliance and defeat class certification early in the case.

Accordingly, should a complaint survive a motion to dismiss, defense counsel should be immediately prepared to reload and brief the issue of class certification if it has a viable *Goldman* mismatch argument. Indeed, Federal Rule of Civil Procedure 23(c) directs courts "at the earliest practicable time . . . to determine by order whether to certify the action as a class action."[50] And defense counsel should move to stay discovery pending the outcome of class certification, or at least seek to limit discovery to class discovery, pending the outcome of class certification. This way, issuers have a second chance to virtually eliminate the case early on without the notorious burden and expense of discovery in securities class actions.

Additionally, depending on the strength of the *Goldman* arguments, attempting to defeat class certification early on may bring plaintiffs' counsel to the settlement table earlier with defendants having the upper hand.

Endnotes

1. *In re MINISO Grp. Holding Ltd. Sec. Litig.*, 2024 U.S. Dist. LEXIS 31227, 2024 WL 759246, at *17 (S.D.N.Y. Feb. 23, 2024); *Strezsak v. Ardelyx Inc.*, 2024 U.S. Dist. LEXIS 47461, 2024 WL 1160900, at *5 (N.D. Cal. Mar. 18, 2024).

2. *New England Carpenters Guaranteed Annuity & Pension Funds v. DeCarlo*, 80 F.4th 158, 176 (2d Cir. 2023); *Se. Pennsylvania Transportation Auth. v. Orrstown Fin. Servs., Inc.*, 2016 U.S. Dist. LEXIS 169379, 2016 WL 7117455, at *13 (M.D. Pa. Dec. 7, 2016); *In re Qiwi plc Sec. Litig.*, 2023 U.S. Dist. LEXIS 197945, 2023 WL 7283619, at *13 (E.D.N.Y. Nov. 3, 2023); *In re Citigroup Sec. Litig.*, 2023 U.S. Dist. LEXIS 50726, 2023 WL 2632258, at *18 (S.D.N.Y. Mar. 24, 2023).

3. *Omnicare*, 575 U.S. at 175; *Villella v. Chem. & Mining Co. of Chile Inc.*, 2017 U.S. Dist. LEXIS 45501, 2017 WL 1169629, at *10 (S.D.N.Y. Mar. 28, 2017); *In re Plains All Am. Pipeline, L.P. Sec. Litig.*, 307 F. Supp. 3d 583, 622 (S.D. Tex. 2018).

4. *See, e.g., In re Home Point Cap. Inc. Sec. Litig.*, 2022 U.S. Dist. LEXIS 239647, 2022 WL 18932069, at *5 (E.D. Mich. Oct. 5, 2022) (concluding that the company's statement that "we believe that [our scalable operating platform] provides us with significant operating leverage" was adequately pleaded as false); *In re Intuitive Surgical Sec. Litig.*, 2017 U.S. Dist. LEXIS 161098, 2017 WL 4355072, at *2 (N.D. Cal. Sept. 29, 2017) (same regarding the company's opinion statements that "[w]e believe [that the company's surgery system] continues to be a safe and effective surgical method").

5. While this analysis may overlap with principles of loss causation and materiality—which courts have found to be inappropriate merits questions at the class certification stage—*Goldman* held that evidence of such a "mismatch" is appropriate evidence to defeat price impact and the presumption reliance at class certification. *Goldman*, 594 U.S. at 114 (2021) (courts must "consider all record evidence relevant to price impact, regardless whether that evidence overlaps with materiality or any other merits issue"); *Delaware Cnty. Emps. Ret. Sys. v. Cabot Oil & Gas Corp.*, 2023 U.S. Dist. LEXIS 172506, 2023 WL 6300569, at *6 (S.D. Tex. Sept. 27, 2023) ("The class-certification question of whether the *Basic* presumption [of reliance] has been rebutted by evidence of no price impact overlaps with the merits questions of materiality, reliance, and loss causation. Nonetheless, district courts must consider all probative evidence" to determine whether the *Basic* presumption of reliance has been rebutted) (citing *Goldman*, 594 U.S. at 122 n.2).

6. Economic arguments against class certification are also available at summary judgment and trial. *See, e.g., Basic Inc. v. Levinson*, 485 U.S. 224, 241, 259 n.29 (1988); *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 482 (2013); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 279 (2014). Sometimes, it is strategically smart to make such arguments at summary judgment along with arguments on other elements.

7. *Arkansas Tchrs. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 879 F.3d 474, 479-480 (2d Cir. 2018).

8. *Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 955 F.3d 254, 259 (2d Cir. 2020).

9. *Id.*

10. *Id.*

11. *Goldman*, 879 F.3d at 478-79.

12. *Goldman*, 594 U.S. at 120; *In re Goldman Sachs Grp., Inc. Sec. Litig.*, 579 F. Supp. 3d 520, 523 (S.D.N.Y. 2021), *rev'd and remanded sub nom. Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74 (2d Cir. 2023).

13. *Goldman*, 594 U.S. at 118.

14. *Id.* at 119 (citing *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 279 (2014) ("*Halliburton II*").

15. *Halliburton II*, 573 U.S. at 269.

16. *Goldman*, 594 U.S. at 116.

17. The other, more traditional, theory of price impact is where a stock's price increases at the beginning of the class period because of an alleged false or misleading statement.

18. *Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74, 80 (2d Cir. 2023).

19. It should be noted that the Supreme Court has not opined on whether the "price maintenance" theory is a valid means to establish price impact. *Goldman*,

594 U.S. at 120 n.1 ("Although some Courts of Appeals have approved the inflation-maintenance theory, this Court has expressed no view on its validity or its contours. We need not and do not do so in this case."). The Eighth Circuit has rejected it and there is some precedent in the Fifth Circuit that undermines its validity as well. *See IBEW Local 98 Pension Fund v. Best Buy Co., Inc.*, 818 F.3d 775, 782-83 (8th Cir. 2016) (reversing certification because back-end drop alone was insufficient evidence of front-end price impact); *Greenberg v. Crossroads Sys., Inc.*, 364 F.3d 657, 665 (5th Cir. 2004) (confirmatory misstatement that does not change stock price does not cause a price impact "[b]ecause the presumption of reliance is based upon *actual movement* of the stock price") (emphasis in original).

20. The Supreme Court did not de-certify the class, but instead remanded the case for further proceedings.

21. *Goldman*, 594 U.S. at 123.

22. *Id.*

23. *Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 11 F.4th 138, 143 (2d Cir. 2021).

24. *In re Goldman Sachs Grp., Inc. Sec. Litig.*, 579 F. Supp. 3d 520 (S.D.N.Y. 2021).

25. *Goldman*, 77 F.4th at 80–81.

26. *Id.* at 94.

27. *Id.* at 97-98.

28. *Id.* at 98-101 (emphasis in original).

29. *Id.*

30. *Goldman*, 77 F.4th at 99, 100-101.

31. *Johnson & Johnson*, 2023 U.S. Dist. LEXIS 230755, 2023 WL 9017023, at *1.

32. *Id.* at *2-3.

33. *See, e.g., Meyer v. Greene*, 710 F.3d 1189, 1197–98 (11th Cir. 2013) ("[c]orrective disclosures must present facts to the market that are new, that is, publicly revealed for the first time"); *Catogas v. Cyberonics, Inc.*, 292 F. App'x 311, 314 (5th Cir. 2008) ("[B]ecause publicly disseminated information is reflected in the price of a stock traded on an efficient market, confirmatory information—that information already known to the market—may not constitute such a corrective disclosure."); *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501, 512 (2d Cir. 2010) ("negative characterization of previously known information cannot constitute a corrective disclosure"); *Teacher's Ret. Sys. of La. v. Hunter*, 477 F.3d 162, 187–88 (4th Cir.2007) (same); *In re Merck & Co. Sec. Litig.*, 432 F.3d 261, 269–70 (3d Cir.2005) (same).

34. J&J Defendants Appeal Brief, *San Diego Cnty. Emps. Ret. Ass'n v. Johnson & Johnson, et al.*, Case No 24-1409 (3d Cir.), Dkt. #20 ("J&J Appeal Brief").

35. J&J Appeal Brief, at 38-39, 52, 60-61.

36. *Johnson & Johnson*, 2023 U.S. Dist. LEXIS 230755, 2023 WL 9017023, at *14; *id.* ("Though the parties dispute whether the verdict constitutes a corrective disclosure, the Court declines to resolve that dispute on this motion for class certification.").

37. J&J Appeal Brief, at 18.

38. J&J Plaintiff Appeal Brief, Dkt. #25, at 2, 44.

39. *San Diego Cnty. Emps. Ret. Ass'n v. Johnson & Johnson*, No. 24-1409, 2025 U.S. App. LEXIS 18986, 2025 WL 2176586, at *4 (3d Cir. July 30, 2025), *cert. denied sub nom. Johnson & Johnson v. San Diego Cty. Emps.*, No. 25-977, 2026 U.S. LEXIS 1714, 2026 WL 1052034 (U.S. Apr. 20, 2026).

40. *Id.* at *5, *10.

41. Zillow Defendants Appeal Brief, *Jaeger v. Zillow Grp., Inc., et al.*, Case No. 24-6605 (9th Cir.), Dkt. #10.1 ("Zillow Appeal Brief"), at 4.

42. *E.g., id*. at 6-7 ("The record number of homes purchased was more than double that of Q1 2021 and is a direct reflection of the customer value proposition, the progress we have made in strengthening our pricing models and automation when providing offers to customers."; "We made progress this quarter in improving our pricing models, including launching the neural Zestimate, which sharpened our offer strength," and "[t]hese improvements drove rapid gains in conversion rates in Q2 when compared to Q1, resulting in record purchases, more than catching up to our pre-pandemic pace."; statements indicating "strong customer interest in [Zillow

Offers]…at the beginning of Q2," which "continued to accelerate" throughout the quarter).

43. *E.g.*, *id*. at 8 ("the 353 basis point improvement from a year ago in renovation, holding and selling costs, were largely durable operational improvements.").

44. Zillow Appeal Brief at 9.

45. *Jaeger*, 746 F. Supp. 3d at 1036-38.

46. The Ninth Circuit noted that its decision "is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3." *Jaeger v. Zillow Grp., Inc.*, 2025 U.S. App. LEXIS 24977, 2025 WL 2741642, at *1 (9th Cir. Sept. 26, 2025).

47. *See In re NVIDIA Corp. Sec. Litig.*, 2026 U.S. Dist. LEXIS 63927, 2026 WL 821418, at *19-22 (N.D. Cal. Mar. 25, 2026); *In re Enovix Corp. Sec. Litig.*, 2026 U.S. Dist. LEXIS 87945, 2026 WL 1078569, at *8 (N.D. Cal. Apr. 21, 2026).

48. The alleged misrepresentations in *Goldman* were deemed not to be statements of opinion. *Richman v. Goldman Sachs Grp., Inc.*, 868 F. Supp. 2d 261, 280 (S.D.N.Y. 2012).

49. *Goldman*, 594 U.S. at 123.

50. *Landeros v. Pinnacle Recovery, Inc.*, 692 F. App'x 608, 611 (11th Cir. 2017) (citing Rule 23(c)) (cleaned up). ■

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