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Presentation By:
CATHERINE PRATSINAKIS, Esq.

INTRODUCTION

TOPIC 1: *INDYMAC* AND *HALLIBURTON* - HOW THESE CASES COULD SHAPE YOUR FUND'S MONITORING & SECURITIES LITIGATION POLICIES

TOPIC 2: THE EMERGING "CLAIMS PURCHASING" INDUSTRY, BENEFITS & CONSIDERATIONS

TOPIC 3: BYLAWS AIMED AT UNDERMINING SHAREHOLDER RIGHTS TO BRING AN ACTION.

TOPIC ONE

IndyMac: A Cautionary Tale

Two Types of Limitations Periods

- Statute of Limitations: 1 years from date investor discovers wrongdoing (2 years for fraud cases)

- Statute of Repose: 3 years from date investor purchased security (5 years for fraud cases)

IndyMac Factual Background

- Plaintiffs brought Section 11 and 12 claims alleging that the offering documents associated with 106 mortgage-backed securities were false and misleading. Named plaintiffs purchased securities in only 15 of the 106 offerings.
- The district court held that they lacked standing to bring claims on behalf of those who purchased in the other 91 offerings. Various funds sought to intervene, but district court held that the claims were time-barred by the statute of repose in the Securities Act of 1933.
- The Second Circuit agreed that the 3-year statute of repose had lapsed, that and the tolling principle in *American Pipe* did not apply to a statute of repose.
- Without the benefits of tolling, IndyMac investors in 91 of the 106 mortgage-backed security offerings lost their claims.

CONSEQUENCES OF *INDYMAC*

- Absent class members may have to decide, within the applicable repose period, whether to pursue individual claims or risk losing the right to pursue such claims.
- A class member may no longer have the ability to "opt out" of a class or settlement class to assert its own claim, if the repose period has run.
- The full implications of *IndyMac* have yet to be determined but a conservative approach is advisable.

IndyMac Hypothetical #1

* Fund loses $250k in Company X Fraud
* Fund decides to remain a passive class member
* Case settles more than 5 years later for $10 million, and likely recovery is $1,000
* Fund wishes to opt out of settlement and pursue its own claims, but repose period has run.
* Too late to bring a separate action.

INDYMAC HYPOTHETICAL #2

* Fund loses $1.0 million in bonds in mega-fraud.

* Fund decides to remain a passive class member.

* Case settles > 5 years later for $1.0 billion.

* Fund's bonds were not included in settlement class because named plaintiffs lacked standing.

* Too late to bring a separate action.

Monitoring Process

- Funds are notified of: (a) meritorious new case filings, (b) the fund's losses within the proposed class period ; and (c) the deadline to move for lead plaintiff.
- Funds analyze whether or not it makes sense to move for lead plaintiff in the case or to take a passive role as a class member.
- In deciding to be a passive class member, funds cannot assume that their interests are adequately represented by the lead plaintiff.
- Further verification and diligence is needed.

DOES *INDYMAC* IMPACT YOUR SECURITIES LITIGATION POLICY?

Verification Questions

Is the fund adequately represented?

- identify the type of security purchased by your fund during the class period and ensure that lead or one of the named plaintiffs purchased the same security (*e.g.*, did you purchase security in an offering).
- determine if operative complaint raises all viable claims.
- determine if operative complaint names all culpable parties.
- determine if class period covers your viable claims.
- what are the additional potential recoverable damages?
- will your participation increase likely recovery?

If the fund is not adequately represented, then consider:

- joining existing action as named class representative
- initiating a separate action

BOTTOM LINE

- Do not assume your fund's interests are being represented in a securities class action.
- Develop a process to ensure interests are actually being represented in a securities litigation (*i.e.*, talk to a portfolio monitoring law firm, like C&T).
- Take action if necessary, appropriate and suitable per your existing Securities Litigation Policy.

TOPIC TWO

THE *HALLIBURTON* SAGA

ERICA P. JOHN FUND, INC. V. HALLIBURTON CO.

- What is this case about?

  Halliburton is asking the Supreme Court to overrule or limit its prior decision in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) in which the Supreme Court adopted a presumption, based on the efficient market hypothesis, that all publicly available information about a company is reflected in its stock price. A class rep does not need to prove that every member of the class individually eyeballed and relied on a misrepresentation, because under the efficient market theory that reliance may be presumed. Without this presumption, securities fraud class actions would come to a screeching halt because no class can be certified. While it is rare for the Supreme Court to reverse itself, institutional investors and practitioners are rightfully concerned.

- How could this ruling impact your litigation policy?

  If the *Basic* presumption is overruled plaintiffs will be unable to certify a securities fraud class. As a result, funds will need to be even more proactive. Specifically, funds that have suffered losses will need to bring their securities fraud claims individually or as part of a large combined action. Funds' rights and interests can no longer be represented by a class representative.

TOPIC THREE

THE "CLAIMS PURCHASING" INDUSTRY

What is a Claims Purchasing Servicer?

- A claims purchasing servicer or claims purchaser is a third party who either directly, or indirectly through an intermediary, purchases a class member's contingent claim to recovery from a securities settlement fund.

- The claims purchasing industry is not new but is recently emerging in the area of securities settlements.

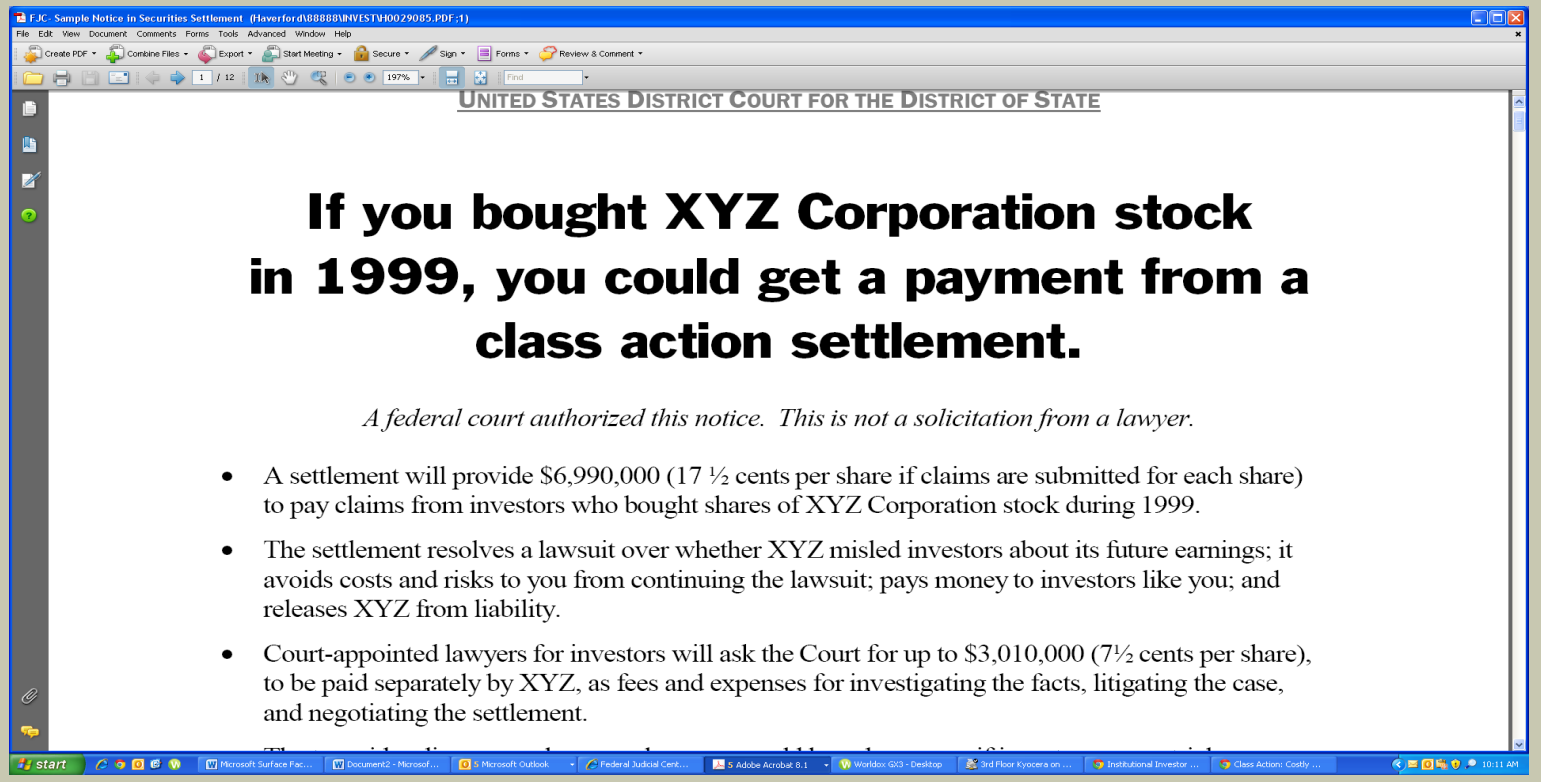
BENEFITS

The benefits are:

- The institution's claim is no longer contingent.
- Immediate liquidity for claimants who might otherwise wait years for recovery.
- Saves time and resources spent monitoring anticipated distributions.

Response Rate And The Impact On Recovery

How is the anticipated future recovery in a class action settlement quantified?



UNITED STATES DISTRICT COURT FOR THE DISTRICT OF STATE

If you bought XYZ Corporation stock in 1999, you could get a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

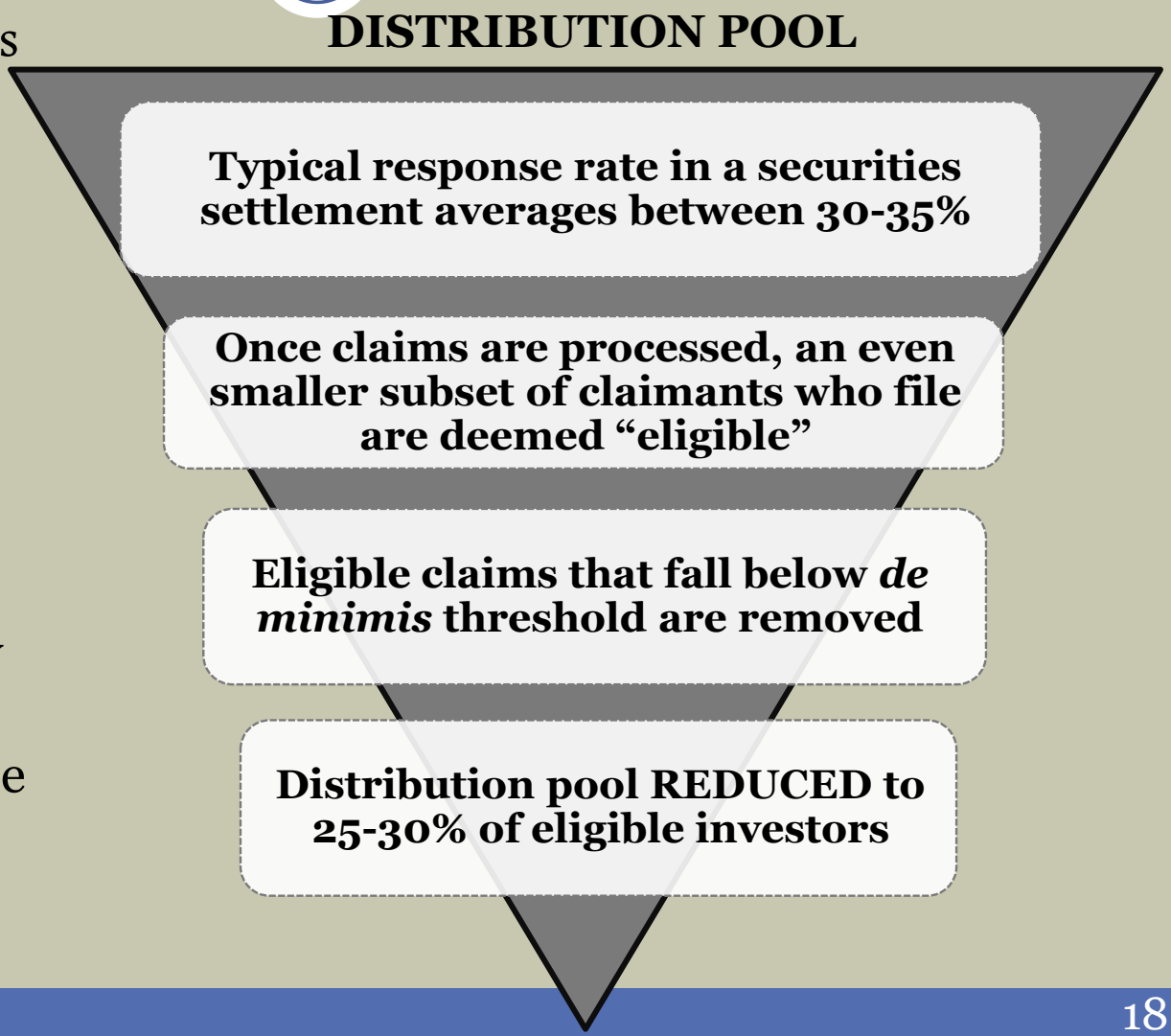
- A settlement will provide $6,990,000 (17 ½ cents per share if claims are submitted for each share) to pay claims from investors who bought shares of XYZ Corporation stock during 1999.
- The settlement resolves a lawsuit over whether XYZ misled investors about its future earnings; it avoids costs and risks to you from continuing the lawsuit; pays money to investors like you; and releases XYZ from liability.
- Court-appointed lawyers for investors will ask the Court for up to $3,010,000 (7½ cents per share), to be paid separately by XYZ, as fees and expenses for investigating the facts, litigating the case, and negotiating the settlement.

* Sample taken from the Federal Judicial Center website at www.fjc.gov.

Response Rate And The Impact On Recovery

The Sample Notice shows an estimated recovery of $.175 per share, but this assumes 100% participation of all eligible investors.

Reality Check:
Participation is typically lower which increases recovery rates for eligible claimants in the distribution pool.



Response Rate And The Impact On Recovery

WHAT DOES THIS MEAN?

Securities settlement are distributed on a *pro-rata* basis, meaning the fewer the participants, the larger the percentage of recovery for participants in the distribution pool.

<u>Example:</u>

Hypothetical Settlement Fund:	$20 million
Ave. estimated recovery per Notice:	$.25/share
Estimated Participation:	100%
Actual Participation Rate:	25%
Actual Recoveries:	$1.00/share

Timing of Distribution

Variables impacting timing of distribution:

- Broker-Nominee Mailing
- Objector Delays
- Appeals and approval uncertainty
- Claims Processing

Distribution Process

- Avg. time from preliminary approval to initial distribution: 1-2 years
- Avg. time to any supplemental distribution: 2.5 or more years

Bottom Line

In deciding whether or not it is in the Fund's best interest to sell its settlement fund claims, consider:

- The projected and actual recoveries; and
- The timing of a typical securities distribution

TOPIC FOUR

BYLAWS AIMED AT UNDERMINING SHAREHOLDER RIGHTS TO BRING AN ACTION.

Bylaw Provisions To Watch Out For

Exclusive Forum Selection Bylaw

- What is an Exclusive Forum Selection Bylaw?

  It is a bylaw that requires investors to bring their shareholder actions exclusively in one specific forum, typically the Delaware Court of Chancery.

- On June 25, 2013, the Delaware Court of Chancery in *Boilermakers v. Chevron* upheld the validity of exclusive forum selection bylaws adopted by Chevron Corporation and FedEx Corporation

- Following the *Boilermakers v. Chevron* decision, 109 companies have adopted the exclusive forum selection bylaw.

- Courts around the country are enforcing unilaterally adopted exclusive forum selection bylaws.

Bylaw Provisions To Watch Out For
Mandatory Arbitration Bylaws

- What is a mandatory arbitration bylaw?
  It is a bylaw that requires all shareholder disputes be resolved in arbitration.

- Some unfair features of these bylaws may include:
  - Elaborate and expensive arbitration procedures;
  - Unfair arbitrator selection process
  - Class action waivers;
  - Prohibition on recovery of attorneys' fees and expenses
  - Limits on discovery

- Real World Example: the Board of CommonWealth REIT unilaterally adopted an arbitration bylaw containing various unfair features. Despite the unfair features of the arbitration bylaw, a Maryland Circuit Court ordered shareholder-plaintiffs to arbitration pursuant to that bylaw.

Bylaw Provisions To Watch Out For
Shareholder Indemnification Bylaw

- What is a Shareholder Indemnification Bylaw?

  It is a bylaw that requires shareholders to indemnify and pay the defense costs in a shareholder action that does not prevail.

- The Board of CommonWealth REIT adopted a shareholder indemnification bylaw. However, this clause was struck by an arbitration panel, but *not* because of its unfairness, but because it conflicted with a provision in the Company's charter.

WHAT CAN YOU DO ABOUT AN UNFAIR BYLAW?

- Vote against board members who chose to adopt bylaws that limit shareholder litigation rights.
- Shareholder proposals: submit a proposal if the entity is incorporated in a state in which shareholders have the right to repeal or amend bylaws.
- Investment decisions: you may want to adopt a policy of avoiding companies that restrict or eliminate shareholder litigation rights.
- Sue to invalidate unfair bylaws that disenfranchise shareholders

Questions & Answers

Catherine Pratsinakis
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Ave.
Haverford, PA 19041
610-649-1497
www.chimicles.com