

Class Action Litigation Newsletter Spring 2020 - Second Circuit

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***Ark. Teacher Ret. Sys. v. Goldman Sachs Grp., Inc.*, 955 F.3d 254 (2d Cir. 2020)**

Second Circuit rejects argument that sought to inject a merits determination about materiality into the class-certification analysis.

The Second Circuit again addressed this class action brought by Goldman Sachs (Goldman) shareholders against the investment company. Plaintiffs allege Goldman made false statements about its conflicts of interest regarding collateralized debt transactions involving subprime mortgages thereby artificially maintaining its stock price. The Second Circuit previously reversed class certification for this same class of investors, concluding that the district court had applied the wrong standard of proof to Goldman's evidence rebutting the presumption of reliance. On remand the district court considered Goldman's rebuttal evidence, rejected it as insufficient, and again certified the class.

In this second appeal, Goldman argued that the district court improperly certified the class because it relied on general statements about the business instead of misstatements about "specific, material financial or operational information" or about meeting "market expectations" regarding specific metrics. The Second Circuit rejected these arguments on the ground that class certification was not the proper procedural stage to determine whether the alleged statements were sufficiently material to support a claim of securities fraud. The Second Circuit acknowledged that the class certification analysis may "overlap" with merits issues, but this principle does not mean a court can undertake a "free-ranging" examination of the merits. The Second Circuit concluded that, although Goldman might be correct that certain statements were insufficiently material, this had nothing to do with whether

common issues predominated under individual issues: “[t]his is why materiality is irrelevant at the Rule 23 stage. Win or lose, the issue is common to all class members.”

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