

PUBLICATION

Supreme Court Decision Impacts Securities Class Action Lawsuits

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On February 27, 2013, the U.S. Supreme Court issued an opinion, *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*, that may make it easier for securities class action plaintiffs to prevail at the class certification stage. In the opinion, the Supreme Court held that proof of materiality of alleged misrepresentations is not a prerequisite to class certification when plaintiffs are proceeding under a fraud on the market theory. Instead, plaintiffs must only plausibly allege that allegedly misleading statements are material in order to win class certification.

The Supreme Court's opinion is likely to increase settlement pressure on defendants in such cases. Prior to *Amgen*, federal courts were divided on whether plaintiffs were required to prove the materiality of statements at the class certification stage of litigation. After *Amgen*, corporate defendants must wait until the summary judgment stage, or trial, to challenge materiality. Once a class is certified, corporate defendants are often pressured into settlement by the high costs of discovery that precede summary judgment and trial.

For public companies, the *Amgen* opinion means that management is under even greater pressure to evaluate on-going corporate disclosures to ensure such disclosures do not contain material misstatements or omissions that would otherwise make the information provided misleading. A statement is deemed to be material if there is a substantial likelihood that a reasonable investor would consider it important in deciding whether to buy or sell a security. This assessment is often difficult for management officials responsible for preparing the extensive disclosures required under the SEC's rules for corporate filings.

While the *Amgen* opinion appears to benefit the class action securities bar by lowering the standards in which to succeed in the class certification stage, *Amgen* provided some indication that relief for corporate defendants may be on the horizon. Over the last 20 years, plaintiffs have benefitted from the "fraud on the market" theory, which presumes that the price of a security traded in an efficient market will reflect all publicly available information about a company. Accordingly, a buyer of the security is presumed to have relied on any publicly-available information in purchasing the security, including the material misstatements alleged in the securities litigation. In *Amgen*, four justices expressed unease over the accuracy and usefulness of the fraud on the market theory. In the event the Supreme Court were to render a decision that overturns the fraud on the market theory, plaintiffs would no longer be entitled to the presumption of reliance, making class certification much more difficult. As a result, liability exposure for public companies would be dramatically reduced.

If you have questions about this or any other securities-related issues, please contact your Baker Donelson attorney.