

Goldman decision wielded in recent securities class action litigation

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A previous securities litigation case that reached the Supreme Court in 2021 (and was ultimately decided by the 2nd U.S. Circuit Court of Appeals in 2023) has begun to percolate in other similar, more recent cases.

The rulings in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 594 U. S. 113 (June 21, 2021) and *Arkansas Teacher Retirement System v. Goldman Sachs Group, Inc.*, No. 22-484 (2d Cir. Aug. 10, 2023), resolved a decade-long question regarding a defendant's ability to challenge class certification in certain securities fraud cases.

These rulings opened the door for defendants to rebut shareholders' presumption of reliance when a case revolves around claims that a defendant made a *generic* misleading statement that kept its stock artificially inflated. Two defendants have notably sought to implement the same argument that Goldman Sachs used — with differing rates of success — in suits that mirror aspects of the original *Goldman* case.

In 2010, a group of shareholders sued Goldman Sachs in a securities fraud class action lawsuit, alleging that the investment banking company made false and misleading statements that kept its stock prices artificially inflated. Goldman Sachs had issued generic statements about its handling of conflicts of interest, including statements such as, "We have extensive procedures and controls that are designed to identify and address conflicts of interest" and "Our clients' interests always come first."

At the time these statements were made, the plaintiffs claimed that Goldman was in fact engaged in several conflicts of interest and did not have the proper procedures in place to prevent and manage these conflicts. When Goldman later issued statements disclosing regulatory action regarding certain of its transactions, its stock price dropped.

The shareholders sought to certify a class for a lawsuit because of the losses they claimed they had suffered — over \$13 billion. These shareholders invoked the "presumption of reliance" endorsed in *Basic Inc. v. Levinson*, 485 U. S. 224 (1988), which presumes that, in an efficient market, investors rely on the market price of a security when making purchasing decisions because this market price reflects all of a company's public representations (as well as any of its misrepresentations).

This "fraud-on-the-market" theory prevents investors from having to prove that they each individually relied on the alleged misstatement(s) when making a securities claim.

However, *Basic* also allows for this presumption to be rebutted by a defendant if they can show that the alleged misstatements had no "price impact" and can deliver "[a]ny 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."

In the third quarter of 2024, there were two notable instances of Goldman's application, but with differing results.

Goldman maintained that the alleged misrepresentations had no effect on its stock price, namely because the statements were too general to be relied upon by reasonable investors.

After the case made it to the Supreme Court, the Court decided (<https://bit.ly/430qYPa>) to remand the case back down to the lower courts in June of 2021, citing that it was "unclear whether the Second Circuit properly considered the generic nature of Goldman's alleged misrepresentations in reviewing the District Court's price impact determination."

It instructed the lower courts to examine the sufficiency of the link between the "back-end price drop" and the "front-end" inflation in question by determining if there was "a mismatch between the contents of the misrepresentation and the corrective disclosure."

The 2nd Circuit ultimately decided (<https://bit.ly/4k8m5JV>) to decertify the class on Aug. 10, 2023, because it determined that the original alleged misstatements were overly generic, whereas the subsequent "corrective disclosures" from Goldman regarding enforcement activity were much more specific. The 2nd Circuit found that there was enough of a mismatch to sever the link between the alleged misstatements and any impact on Goldman's stock price.

Both the Supreme Court and the 2nd Circuit's rulings in this case have been cited in more recent securities cases, with defendants attempting to use them to avoid class certification. In the third

quarter of 2024, there were two notable instances of *Goldman's* application, but with differing results.

In *Shupe et al. v. Rocket Companies Inc.*, No. 1:21-cv-11528 (E.D. Mich. Sep. 30, 2024), a shareholder sought to certify a class against Rocket Companies, a group of businesses involved in a variety of industries, including mortgaging and home finance.

Rocket Companies allegedly knew in late 2020 that its profitability would soon decline based on a variety of internal indicators and rising mortgage interest rates. Plaintiffs alleged that statements made by the Vice Chairman of Rocket's Board of Directors in early 2021 contradicted this and served to artificially inflate and maintain Rocket's stock price.

Applying the *Goldman* decision, the district court found (<https://bit.ly/4gMDpRS>) in favor of Rocket Companies, citing the previous case's rationale: "But here, like in *Goldman*, a considerable mismatch exists between the *generic* nature of the alleged misrepresentations and the *specific* revelation."

The decision points out that the alleged misstatements consisted of general positive sentiments about the company's opportunities to grow when mortgage interest rates rose. Conversely, the corrective disclosures gave specific data regarding the company's closed loan volume, net rate lock volume, and gain on sale margins.

The district court asserted that, "The generic nature of [the Vice Chairman's] alleged misrepresentations, balanced against the specific nature of Rocket's alleged corrective disclosure, presents 'important evidence' that [the Vice Chairman's] alleged misrepresentations had no price impact."

The plaintiffs opted to file a renewed motion for certification that abandoned the false and misleading statement allegations and focused solely on other claims not dependent on the presumption of reliance.

In a similar case, *Jaeger v. Zillow Group Inc.*, No. 2:21-cv-01551 (W.D. Wash. Aug. 23, 2024), a shareholder for Zillow, a real-estate marketplace company, petitioned for class certification after claiming to have suffered losses amidst the shuttering of the company's house-flipping business.

In 2018, Zillow launched a new branch of its business that would focus on acquiring, renovating, and selling houses for a profit using

what the company touted as its superior algorithms and pricing models for home valuation. However, by 2021, through a series of articles, reports, and Zillow-issued releases, it was revealed that the house-flipping business had halted its acquisitions due to a backlog of houses it was unable to renovate and sell. Additionally, the company revealed that it had overpaid for nearly 18,000 homes and was planning to shutter, primarily due to deficiencies with its algorithms and pricing models.

Plaintiff Jaeger sought to certify a shareholder class, arguing that these so-called corrective disclosures made Zillow's previous statements originally touting its algorithm's competitive advantage false and misleading. The district court agreed (<https://bit.ly/3QmgOfv>) with Jaeger, determining that the latter corrective disclosures revealed the consequences of the prior misrepresentations and thus could be linked to price impact.

However, Zillow has appealed to the 9th U.S. Circuit Court of Appeals, arguing that the District Court failed to apply the *Goldman* case correctly. In a brief filed with the 9th Circuit on Jan. 8, 2025, Zillow asked the Court to interpret and apply *Goldman* in what it feels to be the correct manner. It argues that:

"... none of the four [corrective disclosure] statements addressed or revealed the allegedly omitted information from the alleged misstatements ... Thus, there is a stark 'mismatch' between front-end and back-end statements under the standards of *Goldman* and *Goldman II*, invalidating the presumption [of reliance]."

Clearly, the application of the *Goldman* ruling has yet to produce uniform results. If the 9th Circuit were to decide in favor of the defendants in the future, it would be a boon to defendants facing securities suits that purport generic false and misleading statements artificially kept stock inflated.

If the plaintiffs prevail on this point, the application of *Goldman* would be murkier. But based on the argument's early success in *Shupe v. Rocket Companies*, it will likely still be a tool used by corporate defendants when mounting a defense against class certification and could conceivably be a deterrent to plaintiffs looking to sue with regard to overly generic statements.

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