

The Supreme Court - June 21, 2021

Today, the Supreme Court of the United States issued the following three decisions:

Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System, No. 20-222: In this securities-fraud class action, plaintiff pension funds brought suit against the Goldman Sachs Group, alleging that Goldman had maintained an artificially high stock price by making false or misleading generic statements about its conflict management abilities. According to the plaintiffs, the result was that when several undisclosed conflicts of interest came to light, Goldman's stock price fell and its shareholders suffered losses. The plaintiffs' class certification theory relied upon the presumption established by the Court in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), which rests on the theory that investors rely on the market price of a company's security, which incorporates all of the company's public misrepresentations. Goldman attempted to rebut the *Basic* presumption with evidence that its purported misrepresentations had no actual impact on its stock price, but the District Court certified the class after finding Goldman had failed to carry its burden, and the Second Circuit affirmed. Today, the Court vacated and remanded, holding that the generic nature of a misrepresentation often is important evidence of price impact that courts should consider at class certification, something which the Second Circuit may not have properly considered. The Court further held that with respect to the burden of persuasion, the Second Circuit had properly determined that at class certification, the defendants bear the burden of persuasion to prove a lack of price impact by a preponderance of the evidence. Justice Barrett issued the Court's opinion, joined in full by Chief Justice Roberts, as well as Justices Breyer, Kagan, and Kavanaugh. Justice Sotomayor concurred in part and dissented in part, agreeing with the Court's holdings as to the legal standards, but concluding that affirmance was appropriate because the Second Circuit had properly considered the generic nature of Goldman's alleged misrepresentations. Justice Gorsuch, in an opinion joined by Justice Thomas and Justice Alito, also concurred in part and dissented in part, joining the Court's opinion except for the holding that the defendant, rather than the plaintiff, bears the burden of persuasion on price impact.

Related Capabilities

- Appellate
- Securities & Financial Services Litigation & Enforcement
- Class Action Litigation
- Antitrust & Competition Law
- Intellectual Property Litigation

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National Collegiate Athletic Assn. v. Alston, No. 20-512: Current and former student-athletes in certain NCAA Division I sports filed a class action against the NCAA for violating §1 of the Sherman Act's prohibition on contracts, combinations, or conspiracies in restraint of trade or commerce. The District Court conducted a "rule of reason" analysis – a fact-specific assessment of market power and market structure to assess a particular restraint's actual effect on competition. Based on that analysis, the District Court upheld the NCAA's rules limiting undergraduate athletic scholarships and other compensation related to athletic performance, but enjoined the NCAA's rules limiting the education-related benefits schools may offer student athletes. Both sides appealed, and the Ninth Circuit affirmed in full. Only the NCAA petitioned the Court. The Court today affirmed, holding that the District Court properly subjected the NCAA's compensation restrictions to a rule of reason analysis, and rejecting the NCAA's challenges to the District Court's application of its rule of reason analysis. Justice Gorsuch issued the Court's unanimous opinion. Justice Kavanaugh also issued a concurring opinion to underscore that the NCAA's remaining compensation rules not at issue in this suit also raise serious questions under the antitrust laws.

View the Court's [decision](#).

United States v. Arthrex, Inc., No. 19-1434: The Leahy-Smith America Invents Act of 2011 established the Patent Trial and Appeal Board ("PTAB"), an executive adjudicatory body within the Patent and Trademark Office ("PTO"), that conducts inter partes review of previously issued patents. Any person can petition the PTO Director (who is appointed by the President with the advice and consent of the Senate) to institute inter partes review. If the Director determines certain statutory requirements are met, the Director can designate three members of the PTAB (generally Administrative Patent Judges ("APJs") appointed by the Secretary of Commerce) to conduct an inter partes proceeding. That PTAB panel's decision is not subject to further Executive Branch review, but is subject to judicial review in the Federal Circuit. Here, after a PTAB panel consisting of three APJs held Arthrex's patent was invalid, Arthrex appealed to the Federal Circuit, challenging the APJs' authority under the Appointments Clause of the Constitution, which requires that principal officers must be appointed by the President with the advice and consent of the Senate. Inferior officers, in contrast, are those who are directed and supervised at some level by others who were appointed by Presidential nomination and the Senate's advice and consent. The Federal Circuit found that the statutory scheme rendered APJs principal officers because neither the Secretary nor Director had authority to review the APJs' decisions or remove them at will, and fixed the constitutional issue by instead making APJs removable at will be the Secretary. Today, the Court held that the unreviewable authority wielded by APJs during inter partes review is incompatible with their appointment by the Secretary to an inferior office. That part of the Chief Justice's opinion was joined by Justices Alito, Gorsuch, Kavanaugh, and Barrett. As to the remedy, the Court vacated and remanded, concluding that the constitutional violation can be cured by not enforcing the section of the statute preventing the Director from reviewing final decisions rendered by APJs. Justice Gorsuch dissented

from that part of the Chief Justice's opinion, but Justices Breyer, Sotomayor and Kagan, while disagreeing that a constitutional violation had occurred, agreed with the Court's remedy. Those three justices also joined Justice Thomas's dissent, which concluded that APJs are both formally and functionally inferior officers to the Director and Secretary.

View the Court's [decision](#).