

Dueling Classes Dispute the Breadth of Released Claims in the Halliburton Securities Litigation

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In the long-running Halliburton securities litigation, a dispute has arisen between two rival class proponents. While readers of this blog are no doubt familiar with *The Erica P. John Fund, Inc. v. Halliburton Co.* case and its two trips to the [Supreme Court](#), there is also a companion case, *Magruder v. Halliburton Co.* Both cases were filed in the [United States District Court for the Northern District of Texas](#), and both cases deal with various misrepresentations allegedly made by Halliburton and its CEO, which allegedly harmed the value of stock owned by the class members. The alleged class period in the *Magruder* case runs from December 10, 2001 through July 24, 2002, while the *Erica P. John Fund* case covers an earlier period, July 22, 2009 to December 7, 2001. Disputes between the two classes have led the proponent of the *Magruder* class to bring several motions attempting to consolidate the cases and scuttle a potential settlement between Halliburton and the class led by the Erica P. John Fund (the “Fund”). After the Fund revised the definition of “Released Claims,” the court has preliminarily approved the settlement despite the objection.

BACKGROUND

The procedural history of the two cases is somewhat complex, but can be pared down to a basic summary. Both claims arise from allegedly fraudulent misrepresentations by Halliburton through its CEO. When the CEO took his position of Halliburton in the late 1990s, he was left with the task of integrating and restructuring Halliburton and Dresser Industries, Inc., which had recently been purchased by Halliburton. He sold off most of Dresser, and was left with a new entity, DI II. The classes in both cases consist of stockholders of DI II.

In late 2001, DI II lost several case judgments relating to asbestos claims. One such verdict was announced on December 7, 2001, dropping Halliburton’s stock price down from \$20 to \$10 per share. After the verdict was announced, Halliburton’s CEO allegedly downplayed its significance, promised to appeal, and represented to the SEC and the media that Halliburton and DI II were financially under control, which brought Halliburton’s allegedly stock price back up to \$20 per share. However, from May 8, 2002 through July of 2002, Halliburton allegedly made numerous disclosures that the *Magruder* class proponent asserts showed the CEO’s claims of solvency to be false. She claims that Halliburton’s stock dropped back down to \$8.97 per share as a result.

Subsequently, ten lawsuits were filed alleging violations of Section 10(b) of the Securities Exchange Act and SEC Rule 10-5 promulgated thereunder. The suits essentially allege that Halliburton and its CEO knew, but did not disclose, that DI II was either bankrupt or close to it. After years of litigation, including two trips to the Supreme Court, the District Court certified a class in the Erica P. John Fund case, but limited the Fund’s claims to the price impact resulting from the December 7, 2001 verdict disclosure, which predated the alleged class period in the *Magruder* case. Halliburton then settled with the class in the *Erica P. John* case.

THE DISPUTE BETWEEN THE CLASSES



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On January 5, 2017, the *Magruder* proponent moved the court to require the Fund's class to disclose the terms of the settlement, and to lift the stay on the *Magruder* case that was imposed while the *Erica P. John Fund* case was undergoing an interlocutory appeal in the 5th Circuit. Essentially, the *Magruder* proponent argued that the cases were so intertwined that "there will be no resolution by settlement unless both Classes have settled." The *Magruder* proponent asked to be put in the same position as the John class in regards to settlement discussions, and requested that the Court put them on equal footing to aid in those discussions.

The Court granted the unopposed motion to lift the stay, but on February 7, 2017, it denied the *Magruder* proponent's motion to disclose the terms of settlement, given that some terms of the settlement were already public knowledge and the Fund planned to move for preliminary approval disclosing additional terms later that month.

On February 21, the Fund moved for preliminary approval of the settlement. The *Magruder* proponent filed an objection to the breadth of the release of claims in the Fund's proposed settlement. In it, she essentially argued that the Fund did not have the right to release Halliburton from the claims brought by the *Magruder* class. The *Magruder* class period ran from December 10, 2001 through July 24, 2002, while the Fund's class period covered alleged misstatements made before the December 7, 2001 corrective disclosure. The *Magruder* proponent argued that the settlement would not remedy any other corrective disclosures occurring in the later *Magruder* class period. Essentially, she argued that the Fund "can now only speak for [the December 7 disclosure]; they were only class certified on that single issue."

On March 21, 2017, the Court issued an order noting that certain provisions in the release of claims contained in the settlement "are inconsistent in scope." It noted that

"It appears that in exchange for the settlement amount, the Class is purporting to release all claims by anyone who purchased, sold, or *held* Halliburton common stock for claims for misleading or fraudulent conduct up to and including December 7, 2001."

The Court gave the Fund three days to address the inconsistency.

On March 24, 2017, the Fund agreed to modify the definition of Released Claims release in its proposed settlement. While the original definition stated "[o]nly claims based on purchase or acquisition of common stock during the Class Period are being released, its also called for a release of claims that were based upon "the purchase, **ownership, or sale** of Halliburton securities during the Class Period" and also stated that "[f]or the avoidance of doubt, to the extent that Class Members purchased, **sold or held** shares of Halliburton common stock between and including August 16, 1999 and December 7, 2001 (regardless of whether those shares were held after December 7, 2001 or not), those claims are released." The revised definition calls for a release of claims based upon "the **purchase or acquisition** of Halliburton securities during the Class Period" and states that "to the extent that Class Members **purchased or acquired** shares of Halliburton common stock between and including August 16, 1999 and December 7, 2001 (regardless of whether those shares were held after December 7, 2001 or not), those claims are released."

The Court issued an order on March 31, 2017 preliminary approving the the settlement "[s]ubject to revisions reflected" in the Fund's March 24 submission. The Settlement Fairness Hearing was set for July 31, 2017.

Meanwhile, in the *Magruder* case, Halliburton filed a motion to dismiss the second amended complaint back in May of 2012. The court has yet to rule on the motion because the *Magruder* case had been stayed twice pending the resolution of the interlocutory appeals in the *Erica P. John Fund* case. Now that the stay has been lifted, we expect a ruling on the motion to dismiss.

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