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Securities Cases To Watch In 2014

By **Max Stendahl**

Law360, New York (January 01, 2014, 10:08 AM ET) -- A pair of U.S. Supreme Court suits with the potential to further restrict shareholder class action litigation and a former SAC Capital Advisors LP manager's dramatic insider trading trial will be just some of the cases that keep the securities bar on edge in 2014.

Securities attorneys have little time to reminisce about an action-packed 2013, with the U.S. Department of Justice and U.S. Securities and Exchange Commission poised to continue their crackdowns on insider trading and corporate corruption in the new year. The Supreme Court is also expected to deliver landmark rulings in at least two securities cases, which could alter the litigation landscape even further.

Here are the four biggest cases to watch in 2014:

Halliburton Co. v. Erica P. John Fund

It's the Supreme Court case that has everyone talking.

The high court in November agreed to hear Halliburton Co. et al. v. Erica P. John Fund, a case that may determine the fate of the influential fraud-on-the-market theory. That theory, established in the Supreme Court's 1988 decision in Basic Inc. v. Levinson, presumes that investors who buy stock on an efficient market have relied on a defendant's alleged misstatements because they are accurately reflected in the company's stock price. Such a presumption makes it easier to maintain securities cases as class actions, rather than as individual actions.

But recent research has called into question the actual efficiency of modern stock markets, putting the theory in doubt and sending tremors through the U.S. securities bar.

"Since Basic, economists have had a field day disproving the theory, which is now woven into the fabric of securities case law," Skadden Arps Slate Meagher & Flom LLPpartner Susan Saltzstein said.

Four Supreme Court justices have already signaled they are open to the idea of overhauling the fraud-on-the-market theory or scrapping it entirely. The court may ultimately take a middle-of-the-road approach and find that defendants should have an opportunity to rebut the theory at the class certification stage, according to Saltzstein.

In that scenario, she said, “there would be mini-trials as to whether or not there was a price impact. The ability to rebut the presumption of reliance may turn the class certification stage into a battleground."

Oral arguments have been scheduled for March 5.

The plaintiffs are represented by Boies Schiller & Flexner LLP.

The defendants are represented by Baker Botts LLP.

The case is Halliburton Co. et al. v. Erica P. John Fund, case number 13-317, in the Supreme Court of the United States.

U.S. v. Steinberg and U.S. v. Martoma

Once the cream of the hedge fund crop, Steve Cohen’s SAC Capital Advisors LP hedge fund has lately become a regulatory punching bag.

The Stamford, Conn.-based firm pled guilty to five counts of fraud in November as part of a $1.8 billion insider trading settlement — the largest in history. A sprawling, multiyear investigation into suspicious dealing has resulted in federal criminal charges against eight former SAC employees. Six pled guilty, but two — former portfolio managers Michael Steinberg and Mathew Martoma — took their cases to trial. A New York federal jury convicted Steinberg on Dec. 18, while the Martoma trial is scheduled to begin Jan. 6.

Attorneys say the Martoma case gives prosecutors an opportunity to burnish their credentials in insider trading cases. The Southern District of New York, led by U.S. Attorney Preet Bharara, has charged 83 individuals in cases related to insider trading and secured 74 convictions since August 2009. The case could also shed light on Cohen’s oversight of traders accused of fraud. The billionaire has not been criminally charged, though he faces an SEC civil administrative action.

The DOJ and SEC will likely launch scores of new insider trading actions in the coming year, according to Crowell & Moring LLP partner Daniel L. Zelenko, who previously worked for each agency.

"Insider trading cases are very appealing to prosecutors. They can be investigated quickly without a huge commitment of resources, and often the motives for the trading are very apparent to potential jurors,” Zelenko said, speaking generally and not about the SAC case in particular. “There's more of an immediate payoff for law enforcement in pursuing an insider trading case that can be brought to indictment within a relatively short period of time versus a complex fraud investigation that could take years to piece together."

Steinberg is represented by Barry Berke of Kramer Levin Naftalis & Frankel LLP.

Martoma is represented by Goodwin Procter LLP.

The cases are U.S. v. Steinberg, case number 1:12-cr-00121; and U.S. v. Martoma, case number 1:12-cr-00973, both in the U.S. District Court for the Southern District of New York.

Chadbourne & Parke LLP v. Troice, Willis of Colorado Inc. v. Troice, and Proskauer Rose LLP v. Troice

A Supreme Court case alleging Proskauer Rose LLP and Chadbourne & Parke LLP aided the $7 billion Stanford Ponzi scheme could make it more difficult for shareholders to launch class action suits in state court.

By agreeing in January 2013 to hear cases against each of the firms and insurance broker Willis Ltd., the high court signaled it may resolve a circuit split over the application of the Securities Litigation Uniform Standards Act. The 1998 law aimed to prevent shareholders from evading the tough pleading standards of federal litigation by filing suit in state courts. In particular, SLUSA bars state-based suits alleging fraud "in connection with the purchase or sale" of covered securities.

Proskauer Rose and Chadbourne & Parke have asked the Supreme Court to interpret the “in connection with” standard broadly. The firms have lambasted a Fifth Circuit ruling allowing the cases to proceed on the grounds that claims by Stanford investors were only "tangentially related" to securities trades covered by SLUSA. Other circuits, the firms note, have previously barred suits alleging fraud that "coincides with" or "depends upon" SLUSA-covered securities deals.

One attorney, who asked not to be identified because the matter involves other law firms, said the case could be “fairly significant” for securities practitioners.

"The Supreme Court usually takes one or two securities cases per year. It’s like clockwork,” he said. “This is the next big one coming down the pike."

A ruling in the case is expected by June 2014.

The investors are represented by Goldstein & Russell PC.

Chadbourne is represented by O'Melveny & Myers LLP. Proskauer Rose is represented by Davis Polk & Wardwell LLP. Willis is represented by Bancroft PLLC.

The cases are Chadbourne & Parke LLP v. Troice et al., case number 12-79; Willis of Colorado Inc. et al. v. Troice et al., case number 12-86; and Proskauer Rose LLP v. Troice et al., case number 12-88, all in the Supreme Court of the United States.

SEC v. Citigroup Global Markets Inc.

It’s the zombie settlement that just won’t die.

In November 2011, the SEC struck a $285 million pact with Citigroup Inc. to resolve allegations the bank lied to investors in a collateralized debt obligation. Citigroup neither admitted nor denied wrongdoing, a common feature of SEC settlements. The New York federal court's Judge Jed Rakoff took exception to that provision and rejected the deal, causing a firestorm in the securities bar.

The Second Circuit gave the settlement new life in March 2012, granting the SEC's motion to stay the underlying case while it appealed the rejection of the settlement. The appeals court did not issue a ruling on the merits of the deal, but sharply criticized Rakoff and said he had likely overreached in failing to defer to the agency. The Second Circuit heard oral arguments in the case in February but has yet to issue a ruling. One could arrive any day now.

Securities attorneys have privately begun to grumble about the long delay. They say a potential ruling

curtailing the use of no-admit, no-deny deals could force the SEC and defendants into protracted litigation or trials. The case has in some ways become a referendum on Judge Rakoff, and a flash point in the broader debate over the relative authority of federal judges and federal agencies.

“Some judges believe they should be tougher and force people to admit wrongdoing. Historically, courts have been quite deferential to settlements, especially when an agency is involved,” said Jordan Eth, co-chair of Morrison & Foerster LLP’s securities litigation, enforcement and white-collar defense group.

“To have a judge say ‘no’ is certainly an unusual position,” Eth added. “It’ll be fascinating to see how the Second Circuit rules.”

Judge Rakoff is represented by Patrick P. Garlinger of Lankler Siffert & Wohl LLP.

Citigroup is represented by Paul Weiss Rifkind Wharton & Garrison LLP.

The case is U.S. Securities and Exchange Commission v. Citigroup Global Markets Inc., case number 11-5227, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Edrienne Su.

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