



TOGETHER WE CAN!

**STRENGTHEN
PENSIONS**

**ANNUAL CONFERENCE
APRIL 2-5, 2023**



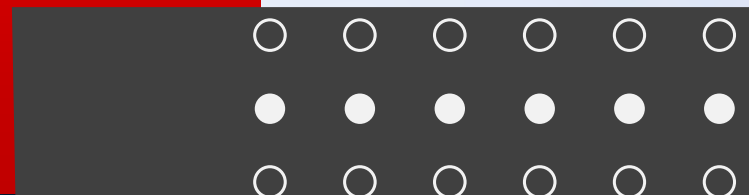
TEXPERS



Follow Us @TEXPERS1 and Use #TEXPERS2023

Recovering Damages from Frauds in Non-Conventional Investments

2023



Joshua Ruthizer, Partner, Wolf Popper
Adam Savett, Of Counsel, Wolf Popper
Tyler Grossman, Executive Director, El Paso Firemen & Policemen's Pension Fund

**WOLF
POPPER**

Joshua Ruthizer - Jruthizer@wolfpopper.com
Adam Savett – Asavett@wolfpopper.com



Follow Us @TEXPERS1 and Use #TEXPERS2023

**ANNUAL CONFERENCE
APRIL 2-5, 2023**



Agenda

- A** Opt-Out Case Study: Merrill Lynch
Opt-Out Litigation
- B** Why Securities Litigation and Portfolio
Monitoring is Important For All Funds
- C** International Case Study:
Volkswagen/Petrobras



TOGETHER WE CAN!
STRENGTHEN
PENSIONS



Follow Us @TEXPERS1 and Use #TEXPERS2023

ANNUAL CONFERENCE
APRIL 2-5, 2023



A

Opt-Out Case Study: Merrill Lynch Opt-Out Litigation

*In re Merrill Lynch & Co., Inc. Secs.,
Derivative and ERISA Litig.*

- Class of investors who acquired Merrill common or preferred stock between October 17, 2006 and December 31, 2008
- Settled in 2009 for \$475 million



TOGETHER WE CAN!
STRENGTHEN
PENSIONS



Follow Us @TEXPERS1 and Use #TEXPERS2023

ANNUAL CONFERENCE
APRIL 2-5, 2023



A

Opt-Out Case Study: Merrill Lynch Opt-Out Litigation

State of New Jersey Division of Investment

- purchased \$300 million of Merrill preferred stock in January 2008;
- converted its preferred shares to common stock in June 2008; and
- was a member of the Class, and could have shared in the \$475 million settlement



Follow Us @TEXPERS1 and Use #TEXPERS2023

ANNUAL CONFERENCE
APRIL 2-5, 2023



A

Opt-Out Case Study: Merrill Lynch Opt-Out Litigation

NJDOJ had breach of contract claims that would have been released in the settlement

- Common stock conversion agreement had a most favored nations clause – all preferred stockholders get the same deal
- Merrill allowed one preferred stockholder to convert on better terms



TOGETHER WE CAN!
**STRENGTHEN
PENSIONS**



Follow Us @TEXPERS1 and Use #TEXPERS2023

**ANNUAL CONFERENCE
APRIL 2-5, 2023**



A Opt-Out Case Study: Merrill Lynch and Bank of America Opt-Out Litigation

Wolf Popper advised NJDOJ to “opt-out” of the class action and settlement

- Filed litigation in 2009
- Settled in 2013 for \$45 million
- ~375x what NJDOJ would have recovered in the class settlement



Follow Us @TEXPERS1 and Use #TEXPERS2023

ANNUAL CONFERENCE
APRIL 2-5, 2023



A

Opt-Out Case Study: Merrill Lynch Opt-Out Litigation

Takeaways:

- Different claims have different elements and damages
- Know what claims are released in a settlement
- Opt-out litigation can, but not always, result in a larger recovery



TOGETHER WE CAN!
**STRENGTHEN
PENSIONS**



Follow Us @TEXPERS1 and Use #TEXPERS2023

**ANNUAL CONFERENCE
APRIL 2-5, 2023**

B

Why Securities Litigation and Portfolio Monitoring is Important For All Funds

Funds may think that securities litigation is not relevant due to lower AUM

- Securities litigation and portfolio monitoring is important to funds of all sizes
- Also important no matter the investing style or securities purchased

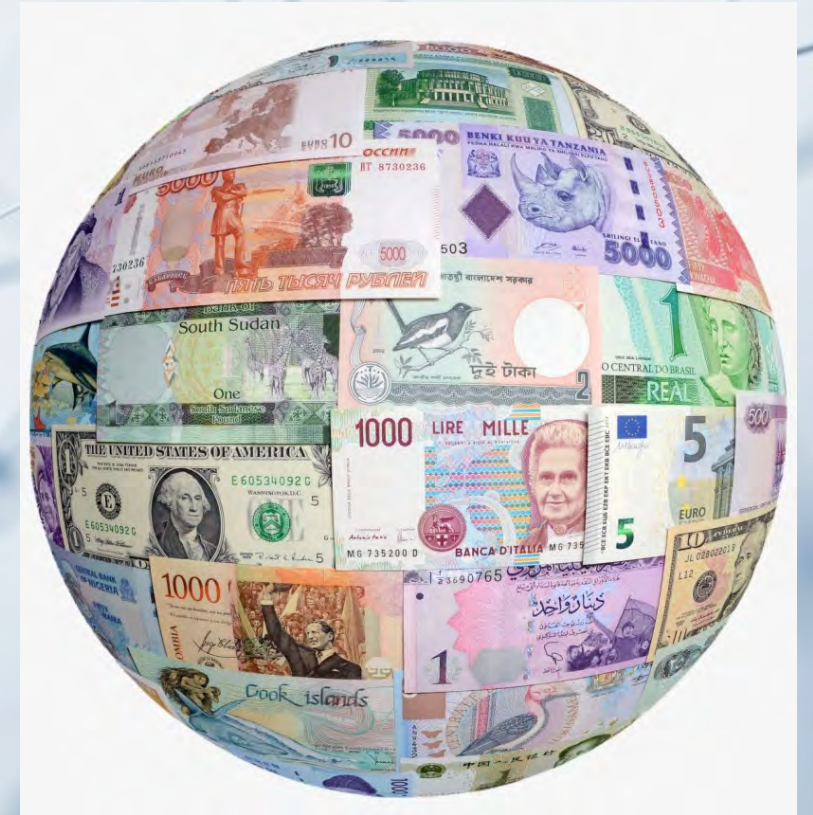


B

Why Securities Litigation and Portfolio Monitoring is Important For All Funds

Funds may think that only the largest funds need to take active litigation steps

- Federal law prefers the investor with the largest loss to be the “lead plaintiff” in charge of a federal securities class action
- Funds with lower AUM can also play an important active role
 - Unique claims
 - Unique securities



B

Why Securities Litigation and Portfolio Monitoring is Important For All Funds

Settlement claims management is important to funds of all sizes

- Academic studies show institutions fail to file claims
- No filing = No recovery
- General rule of thumb – 1–1.5 basis points recovery per year



B

Why Securities Litigation and Portfolio Monitoring is Important For All Funds

Takeaways:

- Does your fund have a Securities Litigation Policy in place?
- Does your fund have Portfolio Monitoring in place?
- Is your custodian capturing funds that are owed to the fund? How do you know?
- How closely are you paying attention to securities litigation cases?



International Case Study

Volkswagen/Petrobras

U.S. Securities Laws only cover securities purchased on a U.S. exchange or otherwise purchased in the United States

- Investors cannot sue in U.S. courts for violations of the U.S. securities for securities purchased on foreign exchanges
- ADR investors can sue in U.S. courts



Volkswagen



PETROBRAS

C

International Case Study

Volkswagen/Petrobras

Foreign laws and procedures are different

- Cases are often “opt-in,” meaning you have to take affirmative action to join
- Have “loser pays” laws - the winning party can recover attorneys’ fees from the losing party
- Contingency fee agreements are not allowed in many jurisdictions



Volkswagen



PETROBRAS



International Case Study

Volkswagen/Petrobras

Litigation Funders typically involved

- Enter into agreements with large groups of damaged investors
- Hire lawyers, pay attorneys' fees and expenses
- Will pay any attorneys' fees awarded to defendants at end of case
- In exchange, take large percentage of the damaged investors' recovery



Volkswagen



PETROBRAS

C

International Case Study

Volkswagen/Petrobras

Volkswagen litigation

- False and misleading statements concerning how cars complied with emissions limits - cheat devices
- Litigation in German and Dutch courts on behalf of investors in non-US listed securities
- Germany: Hearings in model cases started in 2018 and are still continuing
- Dutch action appears largely paused



Volkswagen



PETROBRAS

International Case Study

Volkswagen/Petrobras

Petrobras litigation

- Brazilian national oil company was involved in a massive kickback and bribery scandal
- False statements in concerning value of property, equipment
- Litigation in Dutch court on behalf of investors in non-U.S. listed securities and bonds
- Has survived preliminary steps, but hearings only commenced in January 2023



Volkswagen



PETROBRAS

International Case Study

Volkswagen/Petrobras

Takeaways:

- You may have to take affirmative action to recover in a foreign litigation
 - Being passive and filing a claim form may not be enough
- Fraud may be more prevalent in certain foreign jurisdictions
- Information is key – know where securities are listed and if an action is taking place



Volkswagen



PETROBRAS

QUESTIONS?



TOGETHER WE CAN!
STRENGTHEN
PENSIONS



Follow Us @TEXPERS1 and Use #TEXPERS2023

ANNUAL CONFERENCE
APRIL 2-5, 2023



Speaker



Joshua W. Ruthizer

Partner

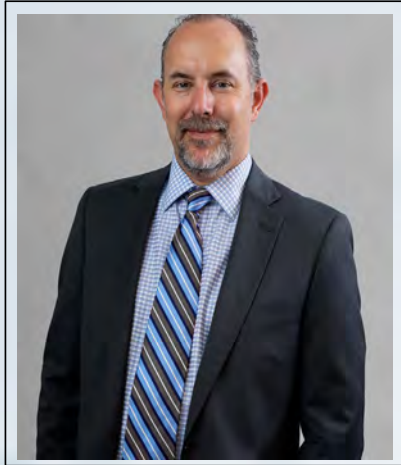
A partner at Wolf Popper LLP, Joshua W. Ruthizer handles complex cases involving corporate transactions, consumer fraud, fiduciary responsibility and securities litigation. From the firm's office in New York, New York, he has been at the helm of class action lawsuits representing investors. Mr. Ruthizer's diligent efforts contributed to the recovery of \$280 million in a case involving the fraudulent issuance of securities backed by residential mortgages. The New Jersey Division of Investment also benefited from his representation in a case against Merrill Lynch that resulted in a \$45 million settlement.

 (212) 451-9668  Jruthizer@wolfpopper.com

As an undergraduate, Mr. Ruthizer attended Lafayette College and received a Bachelor of Arts in history and philosophy in 2000. He then pursued his legal education at Columbia Law School and was awarded his Juris Doctor in 2003. After graduation, Mr. Ruthizer was an associate with the New York City office of a prominent international law firm before joining Wolf Popper LLP, where he became a partner in 2015. He also served an externship with the New York City Law Department.

Admitted to practice in New York and Florida, Mr. Ruthizer is also admitted to practice before the U.S. District Courts for the Southern, Eastern and Northern Districts of New York, the U.S. District Courts for the Southern and Middle Districts of Florida, the U.S. Court of Appeals for the 2nd Circuit, and the Supreme Court of the United States. Mr. Ruthizer has been a member of several legal organizations, including the Federal Bar Council and the Judiciary and Federal Courts committees of the Association of the Bar of the City of New York.

Speaker



Adam Savett

Of Counsel

Adam Savett joins Wolf Popper LLP with more than two decades of experience representing and advising some of the largest and most sophisticated institutional investors, government entities, individuals, and businesses in securities, antitrust, consumer protection, and other complex litigation.



(212) 451-9655



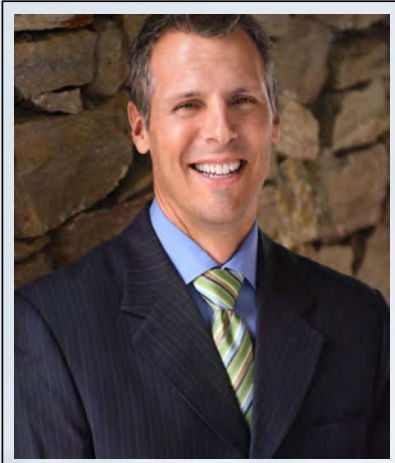
asavett@wolfpopper.com

Adam is a nationally recognized leader on complex litigation, class actions, and settlement claims filing. He is a frequent speaker, author, and commentator on class actions and securities litigation, and his comments have appeared in a wide variety of publications, such as The New York Times, Wall Street Journal, CFO Magazine, and Pensions & Investments.

Adam was previously named one of the 100 Lawyers You Need to Know in Securities Litigation by Lawdragon Magazine and has been an invited speaker before numerous industry groups, including the Federal Judicial Center (FJC), National Conference on Public Employee Retirement Systems (NCPERS), Bank Depository Users Group (BDUG), National Council on Teacher Retirement (NCTR), Association of Global Custodians (AGC), and SIFMA's Global Corporate Actions Forum.




Speaker



Tyler Grossman,

Executive Director, El Paso Firemen & Policemen's Pension Fund

Tyler Grossman was elected to the El Paso Firemen & Policemen's Pension Fund Board of Trustees in 2001 and served until 2006 when he took a brief leave of absence to work in Iraq with a private company protecting United States Diplomats to include the US Ambassador of Iraq. Upon his return, he was re-elected to the board as a trustee in 2009 and served as Chairman of the Board until his retirement in October 2015. He served El Paso citizens since 1994 as a police officer retiring at the rank of lieutenant.

 (915) 771-8111, ext. 110

 info@elpasofireandpolice.org

Upon his retirement he assumed the position of executive director of the El Paso Firemen & Policemen's Pension Fund. He holds a bachelor's degree in criminal justice from Park University and an MBA from the University of Texas-El Paso. Grossman also graduated in July 2013 from the Bill Blackwood Law Enforcement Management Institute of Texas. He was elected to the TEXPERS Board of Directors in March 2012.



WOLF POPPER

Thank You!



845 Third Avenue
New York, NY 10022



(212) 759-4600



Jruthizer@wolfpopper.com
Asavett@wolfpopper.com

YOU LOGO

Wolf Popper LLP is a leading class action litigation firm specializing in securities fraud, mergers and acquisitions, consumer fraud litigation, healthcare litigation, ERISA, and commercial litigation and arbitration. Headquartered in New York City, Wolf Popper has offices in Houston, Texas; Chicago and Springfield, Illinois; Massachusetts; and San Juan, Puerto Rico with additional practices areas in international corporate and commercial law, international arbitration, and health care litigation. For more than seventy-five years, Wolf Popper has recovered billions of dollars for its clients.

Wolf Popper's attorneys are experienced litigators who utilize the firm's state-of-the-art technical resources in investigations and to prosecute complex class and individual litigation matters. Wolf Popper's reputation and expertise has been repeatedly recognized by the courts, which have appointed Wolf Popper to major positions in complex multi-district and consolidated litigations throughout the country.



TOGETHER WE CAN!

STRENGTHEN
PENSIONS



Follow Us @TEXPERS1 and Use #TEXPERS2023

ANNUAL CONFERENCE
APRIL 2-5, 2023