THE MONITOR

A Quarterly Publication by Johnson Fistel, LLP • Summer 2023

It May Not Just Be a Tweet, It Could Also Be a Scam.

Internet users beware. Social media has facilitated the increased relevance of financial markets to daily users. The rise of social media, and social media influencers, has eased financial market manipulations. There has been a recent phenomenon involving stock-focused social media influencers who hold themselves out to investors on Twitter, Discord, Instagram, Facebook, and other platforms as skilled stock traders. These influencers use their credibility with their large following to maximize their own trading profits through their tweets and posts.

A typical scheme, also known as "pump and dump," goes like this: an influencer, or more typically a group of influencers, purchase stock. After purchasing the stock, the influencers seek to "pump" the price of that stock by posting false and misleading information about the stock on their social media platforms so that their followers are induced to purchase the stock and artificially increase its price. Meanwhile, the influencers sell or "dump" the stock to maximize their own profits.

In December 2022, the Securities and Exchange Commission (SEC) charged a group of stock-focused social media influencers with fraud after they allegedly racked up roughly $100 million by promoting pump and dump schemes. In *United States v. Edward Constantinescu et al.*, Court Docket No.: 4:22-CR-612, the SEC alleged that eight influencers, each with at least 100,000 followers and one with over 550,000 followers on Twitter, used their extensive social media presence on Twitter and Discord to hype interest in particular stock by posting false and mislead-

(Continued on Page 2)

In This Issue

Attorney Insights

Pg.	Topic
1	It May Not Just Be a Tweet, It Could Also Be a Scam.
2	Protecting Your Wealth: The Implications of a Reduced Lifetime Gift Tax Exemption in 2025
4	Financial Pitfalls for Lawyers and Doctors: The 8 Most Common Behavioral Mistakes
6	Goldman Sachs Settles Gender Bias Lawsuit for $215 Million
7	SCOTUS Ruling Defines Liability under Securities Act of 1933, Impacting Investors
8	Johnson Fistel Part of Team that Reforms Governance at Geron Corporation
9	Johnson Fistel Secures Significant Corporate Reforms at Uniti Group Inc.
10	Johnson Fistel Recovers Millions and Causes Significant Corrective Reforms

News & Events

Pg.	Topic
3	Upcoming Lead Plaintiff Deadlines
11	Recent Accomplishments

Firm Information

Pg.	Topic
13	Portfolio Monitor—Free Portfolio Monitoring
14	Employment and Labor Litigation
15	About the Firm and Contact Information

You are receiving this newsletter because we believe that the information provided will be of interest to you and any persons on whose behalf you make investment decisions. If you would like additional copies, or to opt out of our mailing list, please call 619.230.0063 or email us at ContactUs@JohnsonFistel.com.

(Continued from Page 1)

ing information to artificially inflate the price of the stock. As the stock price rose, the influencers sold their shares and profited about $100 million.

Here are a few tips to avoid stock scams on the internet: First, consider the source. Remember that the people touting the stock may be paid promoters who stand to profit if you trade. Second, independently verify the claims. It's easy for a company or its promoters to make grandiose claims about new product developments, lucrative contracts, or the company's financial health. But before you invest, make sure you've independently verified those claims. Third, research the opportunity. Check the SEC's EDGAR database to see whether the investment is registered. Finally, always be skeptical. Whenever someone you see on social media offers you a hot stock tip, ask yourself: Why is this stranger giving me this tip? How might they benefit if I trade?

The attorneys at Johnson Fistel are experienced in bringing class action lawsuits on behalf of defrauded investors. Investors who purchase stock at artificially inflated prices face devastating consequences when the truth is inevitably revealed and the stock price plummets. It's no exaggeration to say that some investors could even lose their life savings. If you've been damaged by corporate fraud, please contact us today.

Protecting Your Wealth: The Implications of a Reduced Lifetime Gift Tax Exemption in 2025

This article is reprinted with permission from [Esq. Wealth Management, Inc.]

As a high-net-worth individual, it is essential to be aware of potential changes to the lifetime gift tax exemption and their implications for your wealth transfer strategies. In this article, we will delve into the current state of the lifetime gift tax exemption, including the generous 2023 limit and the anticipated reduction in 2025. By understanding the consequences of inaction and the impact of estate taxes, EsqWealth can help you make informed decisions to safeguard your assets and preserve your legacy.

Understanding the Lifetime Gift Tax Exemption

The lifetime gift tax exemption allows individuals to transfer assets tax-free during their lifetime, reducing their taxable estate. In 2023, the current lifetime gift tax exemption amount is $12.92 million for individuals and $25.84 million for married couples. These historically high exemption limits provide a unique opportunity for high-net-worth individuals to transfer wealth efficiently and minimize estate tax burdens.

Historical Perspective

To appreciate the current favorable environment, let's consider the historical limits that were in place in prior years. Before the enactment of the Trump-era Tax Cuts and Jobs Act of 2017, the lifetime gift tax exemption was significantly lower. For example, in 2009, the exemption was only $3.5 million for individuals and $7 million for married couples. The substantial increase in the exemption over the years highlights the unique advantage individuals currently have in maximizing their wealth transfer strategies.

Potential Reduction in 2025 and its Implications

Unless Congress intervenes, the

(Continued on Page 3)

(Continued from Page 2)

current lifetime gift tax exemption limits are set to decrease after 2025. It is anticipated that the exemption may revert to pre-2018 levels, which were approximately $6 million for individuals and $12 million for married couples, adjusted for inflation. Such a reduction in the exemption could have significant consequences for those with substantial estates.

The Impact of Estate Taxes

If no action is taken before the reduction in the lifetime gift tax exemption, the excess amount over the new threshold will be subject to estate taxes upon your passing. The federal estate tax rate is currently set at 40%. For example, if your estate exceeds the new exemption limit by $10 million, the federal government could potentially impose a staggering $4 million in estate taxes. This substantial tax liability can erode the wealth you worked so hard to build and negatively impact the financial security of your heirs, particularly if they do not have $4 million in cash. The resulting consequences could require them to sell assets at fire-sale prices just to meet the tax burden.

Taking Action to Protect Your Wealth

To mitigate the potential adverse effects of a reduced lifetime gift tax exemption, consider the following strategies:

Gift and Transfer Assets Now: Taking advantage of the current high exemption limits, consider making substantial gifts or transferring assets to your intended beneficiaries. By doing so, you can reduce the size of your taxable estate and potentially avoid significant estate tax liabilities.

Explore Trust Structures: Irrevocable trusts, such as grantor-retained annuity trusts (GRATs) or dynasty trusts, can be powerful tools in wealth transfer planning. These structures allow you to transfer assets while retaining certain benefits or control over them. Consulting with an experienced estate planning attorney can help you determine the most suitable trust arrangements for your specific goals.

Review and Update Your Estate Plan: Regularly review and update your estate plan to align with changing tax laws and personal circumstances. Estate planning is an ongoing process, and staying proactive ensures that your strategies remain effective and in line with your objectives. It is crucial to keep abreast of any legislative changes that may affect the lifetime gift tax exemption.

Conclusion

The current lifetime gift tax exemption provides a favorable opportunity for high-net-worth individuals to transfer wealth efficiently. With the potential reduction in 2025, it becomes crucial to take proactive steps to protect and maximize your assets. By understanding the current landscape, leveraging historical perspective, and seeking professional guidance, you can navigate the complexities of estate and gift tax planning and ensure a lasting legacy for generations to come. EsqWealth can assist you along the way with these and similar issues.

Upcoming Lead Plaintiff Deadlines

Johnson Fistel is investigating many potential cases arising under the federal securities laws. If you would like more information, or if you wish to participate in an action, please contact us as soon as possible to ensure that your rights are fully protected. Listed on this page are matters that the firm is investigating and the applicable deadlines for filing a motion with the court to be appointed as a "lead plaintiff" under the Private Securities Litigation Reform Act of 1995.

Company	Deadline
Tingo Group, Inc.	2023-08-07
DouYu International Holdings Limited	2023-08-08
Electric Last Mile Solutions, Inc.	2023-08-14
UP Fintech Holding Limited	2023-08-21
Seagate Technology Holdings plc	2023-09-08
Baxter International Inc.	2023-09-11
Rain Oncology Inc.	2023-09-12
Proterra Inc.	2023-09-12
Danaher Corporation	2023-09-15

Financial Pitfalls for Lawyers and Doctors: The 8 Most Common Behavioral Mistakes

This article is reprinted with permission from [Esq. Wealth Management, Inc.]

Comprehensive financial planning is a complex endeavor, and professionals such as lawyers and doctors are particularly susceptible to making mistakes in this domain. The demanding nature of their careers, coupled with unique factors related to their professions, can contribute to behavioral mistakes and biases that hinder their investment success. While many people believe they can handle their finances independently, without proper guidance or experience, they could be putting themselves at more risk than they realize.

Warren Buffett, regarded by many as the greatest investor of our time, once said, "It won't be the economy that will do in investors; it will be investors themselves." This statement may be particularly true for lawyers and doctors. In his book *Behavioral Investment Counseling*, Nick Murray identifies the "eight great behavioral mistakes" investors often make. In this article, I explore why lawyers and doctors are especially prone to these pitfalls.

The Demands of the Legal and Medical Professions

I've practiced law for nearly 30 years, formerly as a partner in a large law firm, and have represented many doctors. I know first-hand that both professions can be extremely time consuming, often requiring 12-, 14-, or 18-hour days. On top of the thousands of hours lawyers work annually to meet the needs of their clients, most law firms expect lawyers to spend hundreds of additional hours on client development, professional growth, and continuing legal education. Similarly, in addition to the long hours doctors dedicate to patient care around the clock, they spend many more hours on research and keeping up with advancements in their respective fields. These demanding schedules can result in limited time for comprehensive financial planning and lead to suboptimal decision-making, increasing the likelihood of the behavioral mistakes discussed below.

Overconfidence and Expertise

The expertise that lawyers and doctors possess in their professional fields does not necessarily translate to expertise in financial matters. Research in behavioral finance suggests that individuals with high levels of expertise in one domain may exhibit overconfidence in unrelated areas, including financial decision-making. This overconfidence can lead to neglecting proper analysis, underestimating risk, and making impulsive investment choices based on recent successes rather than careful analysis.

Unique Financial Planning Challenges

Lawyers and doctors often have unique financial planning challenges. For example, both professions typically involve high student loans and a delayed start to full-time employment due to extensive education and training. As a result, these professionals feel pressure to quickly accumulate wealth, which can lead to hasty investment decisions and a lack of long-term perspective. As American economist Paul Samuelson put it, "Investing should be more like watching paint dry or watching grass grow. If you want excitement, take $800 and go to Las Vegas."

Additionally, the high-income potential in these professions can create a false sense of security, leading to lifestyle inflation and poor

(Continued on Page 5)

(Continued from Page 4)

savings habits. The pressure to maintain a certain lifestyle or repay significant student loan debt may divert attention from prudent financial planning strategies.

The Eight Great Behavioral Mistakes

In *Behavioral Investment Counseling*, widely regarded as a seminal work in the field of investment counseling, Murray emphasizes how long-term, real-life returns are only marginally affected by the relative performance of specific investments. Rather, they are absolutely driven by the behavior of investors. To drive the point, he discusses a study known as the Quantitative Analysis of Investor Behavior that has been updated annually since 1994. The study examines the behavior and investment returns of individual investors and demonstrates that they tend to buy and sell at the wrong times, often driven by emotional reactions to market volatility. As a result, they tend to underperform the markets and professional investors over the long term on average by approximately 6% per year!

In Chapter 7 of his book, *Preventing Disaster Before It Happens: The Eight Great Behavioral Mistakes*, Murray discusses the most common mistakes that investors make that can lead to disastrous investment outcomes. Let's delve into these mistakes and consider why lawyers and doctors are particularly likely to make some of them.

1. Overdiversification: Spreading investments across too many different securities or asset classes can dilute returns and make it harder to track performance. Lawyers and doctors, with their demanding schedules, are more likely to find it challenging to dedicate sufficient time and attention to their investment portfolios. This time constraint can lead to overdiversification as they accumulate investments without effectively managing them. As legendary investor Peter Lynch warned, "Owning stocks is like having children—don't get involved with more than you can handle."

2. Underdiversification: Concentrating investments in too few securities, industries, or asset classes can increase risk and volatility, leading to large losses if those investments perform poorly. The intense focus and specialization often required in the legal and medical professions, together with overconfidence, can translate into a tendency to concentrate investments in sectors or asset classes, particularly when a lawyer or doctor "knows" that this product will be a success.

3. Euphoria: Often mislabeled as "greed," investors may become overconfident and buy investments in which they have already seen significant gains. In a state of euphoria, investors often buy at high prices and set themselves up for potential losses. The demanding nature of legal and medical work, coupled with the high salaries they offer, can contribute to a sense of euphoria.

4. Panic: When markets decline sharply, investors may become fearful and sell their investments at low prices, locking in losses and missing potential opportunities for recovery. Lawyers and doctors often experience intense stress in their demanding careers. When faced with market downturns or economic uncertainties, this stress can escalate into panic, causing hasty and ill-advised investment decisions.

5. Leverage: Borrowing money to invest can magnify returns but can also magnify losses and lead to a total loss of invested capital. High salaries earned by lawyers and doctors can create a false sense of security and the temptation to engage in risky investment strategies involving leverage.

6. Mistaking speculating for investing: Investors who take specu-

(Continued on Page 6)

(Continued from Page 5)

lative positions may think they are investing, but they are actually making bets on short-term market movements, which can lead to significant losses. The demanding hours and fast-paced nature of legal and medical work leave lawyers and doctors with limited time to conduct thorough research and due diligence on potential investments. Buying on a hunch is speculating.

7. Investing for current yield instead of for total return: Focusing solely on current income from investments can lead investors to overlook the importance of long-term total returns. Lawyers and doctors nearing retirement or dealing with significant financial pressures may prioritize current income over long-term total returns.

8. Letting the cost basis affect investment decisions: Loss aversion is a cognitive bias that describes why investors tend to hold investments longer than they should: the pain of losing money is psychologically twice as powerful as the pleasure of gaining money. The cost one paid should not be a factor in determining the investment's current value and whether the investment is a desirable component of a well-diversified portfolio. The demanding nature of lawyers and doctors, often accompanied by long hours, can limit the time necessary for them to carefully review their investment portfolios and ignore the cost.

Conclusion

As Murray points out in his book, individual investors are prone to making common behavioral mistakes that have significant long-term consequences on their portfolios that far exceed the management fees financial advisors may charge (typically less than 1% of assets under management). Legal and medical careers with long hours, high salaries, and unique characteristics increase the likelihood that lawyers and doctors will suffer from these behavioral mistakes. At EsqWealth, we work closely with our clients to help them avoid them and make informed decisions about their investments, ultimately helping them achieve their long-term financial goals.

The information above is not intended to and should not be construed as specific advice or recommendations for any individual. The opinions voiced are for general information only and are not intended to provide, and should not be relied on for tax, legal, or accounting advice. To discuss specific recommendations for any unique situation, please feel free to contact us.

Goldman Sachs Settles Gender Bias Lawsuit for $215 Million

Goldman Sachs Group Inc. (NYSE: GS) has agreed to pay $215 million to settle a high-profile class action lawsuit that accused the company of systemic biases against women in pay and promotions. The settlement covers approximately 2,887 current and former female vice presidents and associates who worked in investment banking, investment management, and securities, and enables the parties to avert an anticipated 2023 trial. The average payout to the plaintiffs is anticipated to be approximately $47,000 after deductions for fees and costs.

The settlement concludes 13 years of litigation initiated in 2010 by two former female executives who alleged the bank had denied them pay and promotional opportunities commensurate to their male counterparts. Beyond its financial terms, the settlement also calls for the company to hire independent experts to assess deltas in gender pay and performance evaluation processes.

If you believe you have been illegally victimized by your employer or another person in the workplace, please contact us for a free consultation and case evaluation. You may telephone us at (619) 230-0063 or e-mail us at contactus@johnsonfistel.com.

SCOTUS Ruling Defines Liability under Securities Act of 1933, Impacting Investors

In a significant ruling, on June 1, 2023, the United States Supreme Court has settled a long-standing dispute over the interpretation of a provision in the federal securities laws. The case, *Pirani v. Slack Technologies, Inc.*, centered around the meaning of Section 11 of the Securities Act of 1933 ("the 1933 Act") and its implications for investors seeking to recover losses due to false or misleading registration statements.

Before this decision, the majority of lower federal courts held that liability under Section 11 of the 1933 Act attaches only when buyers could trace their purchases of to a false or misleading registration statement. However, the Ninth Circuit Court of Appeals recently departed from this interpretation, ruling that a plaintiff may sometimes recover under Section 11 even when the shares they purchased were not directly traceable to a misleading registration statement.

The Supreme Court's task was to determine which approach aligns better with the terms of the statute. The 1933 Act and the Securities Exchange Act of 1934 ("the 1934 Act") form the foundation of the federal securities laws. While the 1933 Act primarily focuses on the regulation of new offerings, the 1934 Act extends to ongoing disclosures and trading on secondary markets.

Section 11 of the 1933 Act imposes strict liability on issuing companies when their registration statements contain material misstatements or misleading omissions. The critical question before the Supreme Court was whether the term "such security" in Section 11 refers only to a security issued pursuant to the allegedly misleading registration statement or if it can encompass securities not directly linked to that statement.

After carefully examining the language and context of the statute, the Supreme Court disagreed with the Ninth Circuit Court of Appeals and sided with Slack Technologies. They found that the term "such security" in Section 11 refers to a security registered under the specific registration statement alleged to contain false or misleading information. This means that investors seeking to bring a claim under Section 11 must demonstrate that the securities they hold are traceable to the particular registration statement in question.

Writing for a unanimous Court, Justice Gorsuch emphasized that the Court's interpretation is consistent with prior Supreme Court decisions and the contextual clues provided by the statute itself. He also noted that the broader interpretation suggested by Mr. Pirani, the plaintiff in the case, lacked sufficient clarity and raised concerns about the limits and implications of such an approach.

This ruling has significant implications for investors seeking recourse under Section 11 of the Securities Act. It clarifies that recovery for misstatements or omissions in registration statements is limited to securities traceable to the specific registration statement alleged to be false or misleading. The decision aligns with the longstanding interpretation of the lower courts and provides certainty for issuers and investors alike.

The ruling may impact the recoverability of losses for investors who purchased unregistered shares or shares not directly connected to a defective registration statement. Investors will need to ensure their claims meet the traceability requirement set forth by the Supreme Court to establish liability under Section 11.

Overall, the Supreme Court's decision in *Pirani v. Slack Technologies, Inc.* brings clarity to the interpretation of securities laws and sets a precedent for future cases involving claims under Section 11 of the 1933 Act. Investors and issuers will need to carefully consider the implications of this ruling when assessing potential liabilities and evaluating investment decisions.

Johnson Fistel Part of Team that Reforms Governance at Geron Corporation

Johnson Fistel Part of Team that Reforms Governance at Geron Corporation

Johnson Fistel, as part of a team of law firms, secured valuable reforms at Geron Corporation ("Geron" or the "Company") ending multi-year, multi-jurisdictional litigation. The settlement was achieved through a marathon mediation session overseen by former Vice Chancellor Joseph R. Slights III. Geron is a late-stage clinical biopharmaceutical company focused on development and commercialization of imetelstat, a telomerase inhibitor, for treatment of hematologic myeloid malignancies, such as myelofibrosis, or MF, a deadly blood cancer.

The litigation, which was pending in federal courts in California and Delaware, as well as the Delaware Court of Chancery (which ultimately approved the settlement), arose over the Company's alleged failures to disclose negative drug trial results. Specifically, the lawsuits allege that Geron hid from investors and regulators the negative results of clinical trials for imetelstat. The lawsuit alleges that although results of testing that began in 2015 were disappointing, Geron trumpeted early outcomes, while selling more than $83 million of its shares to uninformed investors in the second quarter of 2018.

Through the settlement, Geron will implement and maintain a series of comprehensive corporate governance reforms for a period of no less than five (5) years from the date of adoption. The reforms are designed to and specifically address the issues at Geron that gave rise to the litigation, will help prevent similar events from happening again at Geron, and will improve Geron's corporate governance overall. Specifically, the reforms include, among other things: (a) the creation of a new, separate, management-level Disclosure and Controls Committee (the "Disclosure Committee"), with the purpose of ensuring (i) the accuracy of any material corporate information disseminated via corporate disclosure channels delivering information to investors, (ii) accurate SEC filings, (iii) appropriate corporate public disclosures and standards concerning research and development ("R&D"), and (iv) the effectiveness of Geron's disclosure controls and procedures; (b) the creation of a new management-level position of Chief Compliance Officer, upon commercialization of one or more of Geron's product candidates; (c) enhanced reporting by management to the Board, including through formal and timely updates regarding (i) any material compliance violations by the Company raised by the FDA or other regulatory agencies and (ii) any material adverse developments in clinical trials that would likely impact Geron's financing and/or the probability of regulatory approval of drugs or biologics under development in a significant manner; and (d) the addition of one new independent director to the Board. In addition to the adoption and implementation of the Corporate Governance Reforms, Defendants acknowledged that the litigation was a factor in Geron's July 2022 revisions to the Company's Insider Trading Compliance Policy. Geron and the Individual Defendants acknowledge that the reforms achieved through the settlement confer substantial benefits on the Company and its stockholders. Indeed, in approving the settlement, Vice Chancellor Sam Glasscock III noted that "[t]his is an excellent result that will make the company a better run and more responsible entity."

Attorneys Frank J. Johnson, Michael I. Fistel, Jr., Brett M. Middleton, and Kristen L. O'Connor led the prosecution of the litigation for Johnson Fistel and, along with co-counsel, helped achieve this "excellent" result on behalf of Geron and its stockholders.

In re Geron Corporation Stockholder Derivative Litigation, C.A. No. 3:20-cv-02823-WHA (N.D. Cal.); *In re Geron Corporation Stockholder Derivative Litigation*, C.A. No. 1:20-cv-01207-GBW (D. Del); *In re Geron Corporation Stockholder Derivative Litigation*, 2020-0684-SG (Del. Ch.).

Johnson Fistel Secures Significant Corporate Reforms at Uniti Group Inc.

On May 9, 2023, The Honorable Audrey J.S. Carrion granted final approval of a stockholder derivative settlement through which significant corporate governance reforms were obtained for the benefit of Uniti Group Inc. ("Uniti" or the "Company"). Johnson Fistel was instrumental in achieving this result for the Company. Uniti, formerly known as Communications Sales & Leasing, Inc., is a publicly traded company that owns and leases telecommunications networks.

The settlement, which the independent members of Uniti's Board unanimously approved, addresses the alleged wrongdoing that triggered the litigation to begin with—namely, inadequate risk oversight and disclosure controls and the issuance of false and misleading statements relating to Uniti's spin-off from Windstream Holdings, Inc. ("Windstream") and the Company's lease of certain network assets to Windstream—through a series of germane corporate governance reforms that, among other benefits, will help prevent a recurrence of the same or similar misconduct in the future.

Specifically, as a result of the settlement, Uniti will adopt, implement, and maintain for a period of at least four (4) years a set of reforms that strengthen the Company's internal controls, improve risk management and compliance policies and disclosure procedures, and enhance the oversight, composition, and procedures of Uniti's Board, including through the creation of a new position of Compliance and Risk Manager and enhancements to the duties and responsibilities of the Company's management-level Disclosure Committee and Board-level Audit Committee. The settlement guarantees that Uniti and its stockholders will reap the long-term benefits of strong corporate governance, which in turn will help enhance investor confidence and improve returns over time as these changes take effect. Weighed against the substantial risks, costs and delays entailed in attempting to improve upon this result through further litigation, the settlement's guarantee of substantial benefits in the form of the strong governance processes, policies, and procedures embodied in the reforms is an excellent result for Uniti, and in turn, its stockholders. Judge Carrion agreed, noting in her Final Order and Judgment that the settlement is "fair, reasonable, adequate, and in the best interests of Uniti and [its stockholders]."

Attorneys Frank J. Johnson, Michael I. Fistel, Jr., William W. Stone, and Oliver S. tum Suden led the prosecution of the litigation for Johnson Fistel and, along with co-counsel, helped achieve this superb result on behalf of Uniti and its stockholders.

Jozsef Mayer et al. v. Kenneth A. Gunderman et al., No. 24-C-21-003488 (Baltimore City Circuit Court, Part 23) and *Vincent Guzzo v. Kenneth A. Gunderman et al.*, Civil Action No. 1:22-CV-00366-GLR (D. Md.).

Johnson Fistel Recovers $4 Million Monetary Payment and Causes Significant Corrective Reforms at Microchip

On June 14, 2023, The Honorable Timothy J. Thomason, Superior Court Judge for the Superior Court of Arizona, Maricopa County, granted final approval of a shareholder derivative settlement which resolved consolidated shareholder litigation brought on behalf of nominal defendant Microchip Technology, Inc. against certain of the company's current and former directors and officers.

The consolidated litigation alleged that these directors and officers breached their fiduciary duties owed to Microchip and its stockholders by issuing materially false and misleading statements regarding the operations and financial performance of Microsemi Corporation, a computer chip manufacturer Microchip acquired for $10.15 billion, and as to certain of the individually named defendants, by trading on material, adverse information related to the Company's business operations, thereby causing the company substantial economic harm.

The settlement is an outstanding result and requires payment of $4 million to the company from its insurers, as well as the company's implementation of critical corporate governance enhancements, to be maintained for a period of five years, including: (i) enhancements to a management-level Disclosure Committee; (ii) acquisition oversight reforms; (iii) enhancements to the duties and responsibilities of the Audit Committee; (iv) the appointment of a Chief Compliance Officer; (v) the establishment of director term limits; (vi) the establishment of a lead independent director role; (vii) enhancements to director independence; and (viii) the establishment of a Board self-evaluation procedure. These reforms are designed to ensure the company's disclosures are accurate and its internal controls are effective, thus conferring substantial immediate and long-term benefits to Microchip and its stockholders.

In connection with final approval of the settlement, Judge Thomason found that the settlement, including the monetary payment to the company and the corporate governance enhancements, "are fair, reasonable, and adequate," and final approval of the settlement was warranted

Johnson Fistel served as lead counsel and Johnson Fistel partners Michael I. Fistel, Jr. and Mary Ellen Conner, and Johnson Fistel associate Enoch P. Hicks, led the prosecution of the litigation and helped achieve this excellent result on behalf of Microchip.

Dutrisac v. Sanghi et al., CV2021-012459 (Sup. Ct. Maricopa Cnty.).

Johnson Fistel Recovers $12.5 Million Monetary Payment and Causes Significant Corrective Reforms at Workhorse

On June 22, 2023, the Honorable Nancy Allf, Judge in the Eighth Judicial District Court of the State of Nevada, Clark County, granted final approval of a shareholder derivative settlement which resolved consolidated shareholder litigation brought on behalf of nominal defendant Workhorse, Inc. ("Workhorse" or the "Company") against certain of the Company's current and former directors and officers.

The consolidated litigation alleged that these directors and officers breached their fiduciary duties owed to Workhorse and its stockholders by issuing materially false and misleading statements regarding the operations and financial performance of Workhorse, an Ohio-based electric car and truck manufacturer. Specifically, they caused the Company to make false and misleading statements, and failed to disclose that: (i) the Company had no assurance from the U.S. Postal Service that it would select an electric vehicle as its main fleet delivery vehicle; (ii) misrepresenting nonbinding interest in the

(Continued on Page 11)

(Continued from Page 10)

Company's vehicles as a purported "backlog" of orders; and (iii) the Company's flagship C-Series was unfit for human safety and the road and did not comport with National Highway Traffic Safety Administration standards.

The settlement is an exceptional achievement and requires payment of $12.5 million to the Company from its insurers, and mandates that that Workhorse adopt therapeutic corporate governance reforms, to be maintained for a period of 4 years, including: (1) Board independence reforms; (2) Lead Director and Non-Executive Chairman requirement; (3) Creation of Chief Compliance Officer Position; (4) Creation of a Disclosure Controls Committee; (5) Audit Committee and Risk Management Enhancements; (6) Insider Trading Controls; (7) Clawback Policy Review; and (8) Whistleblower Protections and Policy Enhancements. These reforms confer substantial immediate and long-term benefits to Workhorse and its stockholders because they are intended to ensure the Company's financial and operational public disclosures are accurate and its internal policies, procedures, and controls are robust and effective.

Johnson Fistel partners Michael I. Fistel, Jr. Brett M. Middleton, and Kristen O'Connor, and Johnson Fistel associate Jonathan Scott, led the prosecution of the litigation for the "Demand Refused Action" and helped achieve this excellent result on behalf of Workhorse.

Cohen v. Hughes et al., Case No. 2:21-cv-08734-CJC-PVC (N.D. Cal) and *In re Workhorse Group Inc. Stockholder Derivative Litigation*.

Recent Accomplishments

Johnson Fistel's Recent Leadership Appointments:

Brill v. Invivyd, Inc., et al., No.: 1:23-cv-10254 (D.Mass): Johnson Fistel was appointed as Co-Lead Counsel in this securities fraud class action against Invivyd, Inc. f/k/a Adagio, Therapeutics, Inc. ("Invivyd" or the "Company") and certain of its senior executives on behalf of purchasers of Invivyd common stock between November 29, 2021 and December 14, 2021 (the "Class Period"). The Company was formed in June 2020, during some of the worst days of the novel coronavirus pandemic, to develop drugs for the treatment and prevention of COVID-19 and future coronavirus outbreaks. During the Class Period, Invivyd was focused on developing ADG20, an investigational monoclonal antibody treatment for COVID-19. The complaint filed in the case alleges that, among other things, defendants failed to disclose: (i) the published epitope mapping, structural studies, and sequence analyses which defendants had used to claim ADG20 was effective against the Omicron variant were insufficient, unreliable, and inadequate to make claims of effectiveness of ADG20 against Omicron; (ii) that defendants' claims regarding ADG20's efficacy against Omicron lacked a reasonable factual basis; and (iii) ADG20 was over 300 times less effective against the Omicron variant as compared to its effectiveness against previous variants.

Brodin v. Jagdfeld, et al., Case No. 2023-CV000435 (In the Circuit

(Continued on Page 12)

(Continued from Page 11)

Court for Waukesha County, State of Wisconsin): Johnson Fistel was appointed as Co-Lead Counsel in this shareholder derivative action asserting claims on behalf of Generac Holdings, Inc. ("Generac" or the "Company") for breach of fiduciary duty (and related claims) against certain current and former officers and directors of Generac. Generac describes itself as "a leading energy technology solutions company that provides backup and prime power generation systems for residential and commercial & industrial (C&I) applications, solar + battery storage solutions, energy management devices and controls, advanced power grid software platforms & services, and engine- & battery-powered tools and equipment." The Company says it is "committed to sustainable, cleaner energy products poised to revolutionize the 21st century electrical grid." The claims are predicated on allegations that the Individual Defendants concealed from investors a defective component at the core of Generac's solar power products and the resultant financial consequences to the Company. Plaintiffs contend the alleged wrongdoing has damaged Generac's reputation, goodwill, and standing in the business community, and exposed the Company to potential liability for violations of state and federal securities laws.

Smith v. Bradford, et al., Case No. A-23-866051-B (District Court, Clark County, State of Nevada): Johnson Fistel was appointed as Co-Chair of the executive committee in this shareholder derivative action asserting claims on behalf of CleanSpark, Inc. ("CleanSpark" or the "Company") for breach of fiduciary duty (and related claims) against certain current and former officers and directors of CleanSpark. CleanSpark describes itself as an energy company that provides advanced software and controls technology solutions, including end-to-end microgrid energy modeling, energy market communications, and energy management solutions. CleanSpark's most recent annual report on SEC Form 10-K, however, describes the Company as "a leading bitcoin mining and diversified energy company." The claims arise from a series of false and misleading statements and omissions made by the Individual Defendants to the public, beginning in approximately January 2021 and continuing through mid-August 2021. Plaintiffs contend the alleged wrongdoing damaged CleanSpark's reputation, goodwill, and standing in the business community, that certain of the Individual Defendants engaged in several dubious related party transactions, and as a result of the misconduct alleged in the complaint, exposed the Company to potential liability for violations of state and federal securities laws.

In re FibroGen, Inc. Derivative Litigation, C.A. No. 2022-0331-SG (Del. Ch.): Johnson Fistel was appointed as Co-Lead Counsel in this shareholder derivative action asserting claims on behalf of FibroGen, Inc. ("FibroGen" or the "Company") for breach of fiduciary duty (and related claims) against certain current and former officers and directors of the Company. FibroGen purports to be a biopharmaceutical company that specializes in developing drugs for treating conditions such as anemia, fibrotic disease, and cancer. Plaintiff's claims arise from allegations that certain current and former officers and directors of FibroGen failed to prevent the Company from misrepresenting to investors that it had developed a breakthrough drug, Roxadustat, that was more effective and safter than the current standard of care for treating anemia due to chronic kidney disease. In addition, the company attempted to gain approval for Roxadustat by submitting to the FDA falsified data from the drug's Phase 3 clinical trials – a fact that the company eventually admitted to on April 6, 2021. Plaintiff contends the alleged wrongdoing has damaged FibroGen's reputation, goodwill, and standing in the business community, and exposed the Company to potential liability for violations of state and federal securities laws.

Portfolio Monitor

Johnson Fistel recognizes that there are inherent risks when investing in the stock market. But the risks that an investor assumes do not, and should not, include the risk that the company or its officers and directors will make false and misleading statements to artificially inflate the company's stock price or sell their own stock based on insider information.

Our Portfolio Monitor is designed to alert institutional and individual investors when one of their investments may be affected by securities fraud, corporate waste, or other wrongdoing. Our Portfolio Monitor is available to both U.S. and foreign investors. There are no minimum portfolio requirements or costs to participate.

In-House Monitoring

Confidential Data Protection

Complimentary Service

For more information call 619.230.0063
Click the link to learn more:
https://www.JohnsonFistel.com/stockmonitor-free-portfolio-monitoring/

Employment and Labor Litigation

The attorneys at Johnson Fistel have obtained successful and efficient results for both employers and employees in litigating employment disputes, negotiating separations and severances, and evaluating employment policies, practices, and contracts.

Johnson Fistel can help employers and employees with the following issues:

- Minimum Wage & Overtime Pay
- Misclassifications (Employee/Independent Contractor)
- Discrimination, Harassment, & Retaliation
- Employment Contracts, Severance & Separations, & Restrictive Covenants.

Whether you're an employee or an employer, please contact us today to determine whether we may be able to assist you.

Please visit our website for FAQs about employment law: https://www.johnsonfistel.com/faq/

JF JOHNSON FISTEL

Partners

Frank J. Johnson | Michael I. Fistel, Jr. | Brett M. Middleton | Mary Ellen Conner | Kristen L. O'Connor

Associates & Counsel

Jeff A. Berens | Enoch P. Hicks | Tiffany R. Johnson | Richard A. Nervig | Anthony E. Mance

Seth M. Schechter | Jonathan M. Scott | Stephen Dolar | William W. Stone | Ralph M. Stone | Oliver S. tum Suden

Support Team

Jim Baker | Tyler Baker | Ashley Lane | Serena Lee | Bridget Morrell | Jennifer Sanders | Savannah Vasquez

Contact Us

San Diego Office	Georgia Office	New York Office	Colorado Office
501 West Broadway, Suite 800	40 Powder Springs Street	620 Fifth Avenue, 2nd Floor	2373 Central Park Blvd, Suite 100
San Diego, California 92101	Marietta, Georgia 30064	New York, New York 10020	Denver, CO 80238
T: 619.230.0063	T: 470.632.6000	T: 212.292.5690	T: 303.861.1764
	F: 770.200.3101	F: 212.292.5680	

Visit Us: http://www.JohnsonFistel.com Contact Us: ContactUs@JohnsonFistel.com