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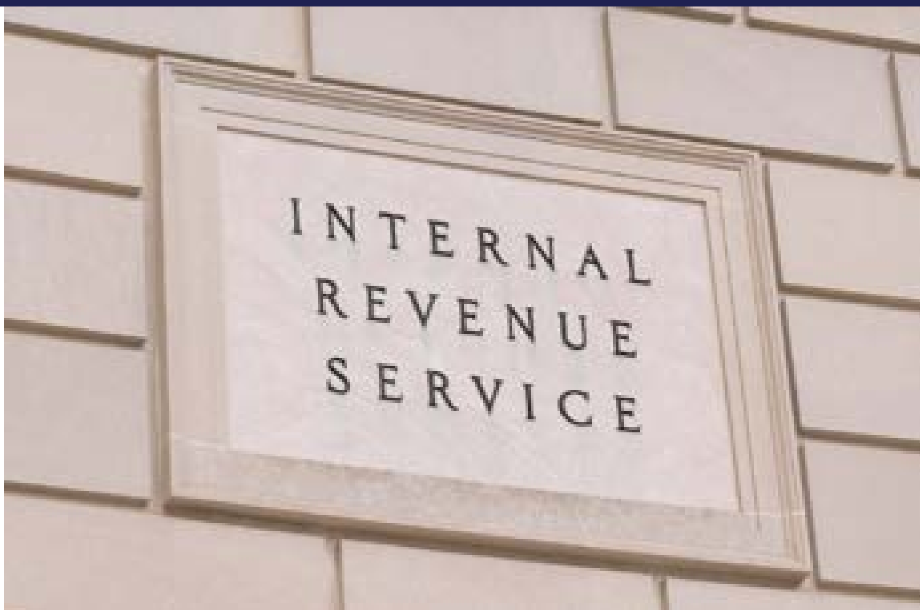

IRS Ruling Could Have Significant Tax Implications for Your Trust Assets

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In a recent conversation, a friend who is not a client shared a strategic decision he had made at the recommendation of his financial advisor: transferring his rental properties into an irrevocable trust for the benefit of his children, aiming to leverage their potentially lower tax rates for rental income. This tactical move seemed shrewd, or so he thought. With the emergence of a new Internal Revenue Service (IRS) ruling, he is now reevaluating his decision.

This IRS clarification arrives in the form of Revenue Ruling 2023-2, shedding light on a topic that has stirred debate – the eligibility of assets gifted within an irrevocable trust to receive a step-up in basis upon the grantor's passing. The implications of this ruling resonate deeply within the financial sector, impacting practitioners and their clients alike.

The Complex World of Trust Asset Basis Adjustment

Within the spheres of estate planning and wealth management, the treatment of trust asset basis adjustment has been marked by differing viewpoints and interpretations. Revenue Ruling 2023-2 emerges as a guiding light, specifically addressing the intricacies of assets held within a grantor trust that were not considered part of the decedent's gross estate for federal estate tax purposes.

Breaking Down the Ruling: Facts

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The ruling's genesis lies in a case where a decedent established an irrevocable trust and funded it with assets classified as a completed gift under gift tax regulations. While the decedent remained the owner for income tax purposes due to their power over the trust under IRC Section 671-679, these assets were not integrated into the decedent's gross estate for estate tax purposes. When the decedent passed away, the trust assets had appreciated in value.

According to IRC Section 1014(a)(1), the basis of property acquired from or passed from a decedent is typically its fair market value at the date of the decedent's death. However, IRC Section 1014(b) outlines seven distinct types of property that are eligible for basis adjustment. These categories encompass property bequeathed, property associated with the decedent's powers of revocation or amendment, and other delineated scenarios.

The IRS's final determination, as stated in Revenue Ruling 2023-2, can be summarized in two key points. Firstly, the assets were ruled not to have been "bequeathed," "devised," or "inherited" in line with IRC Section 1014(b)(1), since the property hadn't passed through a will or intestate succession. Secondly, the assets didn't fit into any other categories listed in IRC Section 1014(b). Consequently, the assets within the grantor trust wouldn't receive a basis adjustment under IRC Section 1014(a), thereby reaffirming that the basis would remain consistent with pre-decedent values.

Ramifications and Significance

This IRS ruling holds immense implications, putting to rest a debate that had spanned multiple years. Although some practitioners previously believed in certain exceptions allowing for basis adjustments, Revenue Ruling 2023-2 unequivocally establishes that assets within a grantor trust, without integration into the decedent's gross estate, don't qualify for a basis adjustment under IRC Section 1014(a). This ruling effectively brings closure to a matter that had been on the IRS's priority guidance plan since 2015.

The effects of this ruling reverberate through the realm of estate planning, notably influencing strategies tied to "defective grantor trusts." ly 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 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

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The previously held assumption that such trusts might enjoy basis step-ups under specific exemptions has been debunked. This ruling effectively clarifies that assets housed within a defective grantor trust, even if acquired due to a decedent's passing, aren't eligible for IRC Section 1014(a) basis adjustment.

Consider the Consequences: Hypothetical Scenario

To better grasp the nuances, let's imagine a scenario. My friend's rental properties, worth $1 million at the time of transfer, appreciate over the years to $4 million at the time of his passing. Under his previous assumption of a step-up in basis, his children would inherit these properties with a tax basis of $4 million. Selling the properties for this amount would entail no capital gains tax. However, under the implications of the new IRS ruling, the original acquisition cost of $1 million would remain as the basis. Selling at $4 million would trigger substantial capital gains tax, substantially reducing the net proceeds.

Exploring an Alternative Path: Unwinding the Trust

Let's consider an alternate path. Instead of gifting the property, he could have opted to retain ownership until his passing. In this scenario, the property would indeed receive a step-up in basis, reflecting its value at the time of your death. As a result, if his heirs decide to sell the property immediately, the capital gains tax could be significantly minimized or even eliminated, as the sales price would align closely with the stepped-up basis. He is now considering whether he can unwind the irrevocable trust, not an easy task. But in this hypothetical, the tax consequences to his heirs could easily exceed $1 million.

Conclusion: Charting a Thoughtful Path Forward

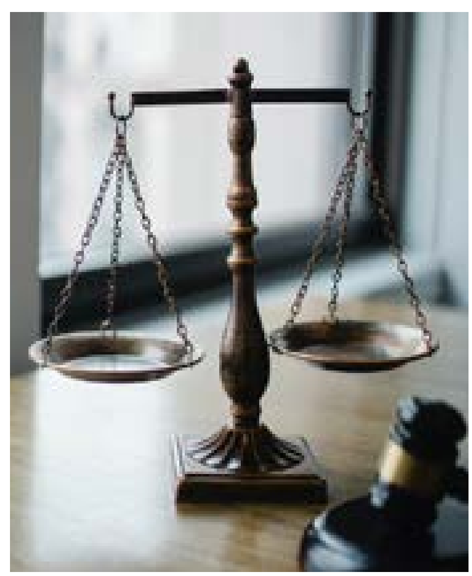
At EsqWealth, we hold the belief that staying abreast of changes in tax regulations is vital for securing your financial future. In essence, Revenue Ruling 2023-2 cements the IRS's position on basis adjustments for assets within grantor trusts, providing lucidity in a multifaceted realm of tax planning. As the landscape evolves, the importance of staying informed and seeking expert guidance remains pivotal in deftly navigating these intricacies. It's worth considering whether you've gifted assets under the assumption of an impending basis step-up upon your passing, and assessing whether recalibrations or amendments are now prudent. Rest assured, at EsqWealth, we're poised to assist you in charting a thoughtful financial path forward amidst these evolving dynamics.

Source: https://www.irs.gov/pub/irs-drop/rr-23-02.pdf

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
Leslie's, Inc.	2023-11-07
Tandem Diabetes Care, Inc.	2023-11-07
CS Disco, Inc.	2023-11-20
DermTech, Inc. (NASDAQ: DMTK)	2023-12-15
DocGo, Inc.	2023-12-26



The Best 5 Stocks to Buy Today – Clickbait Warning

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In today's digital age, financial information is readily available at our fingertips, and it's tempting to click on enticing headlines that promise to reveal "The Best 5 Stocks to Buy," "Top 3 financial Moves to Make," or "Why Markets Are About to Crash." These clickbait articles often feature self-proclaimed stock experts who claim to possess the secret to beating the market consistently. As an investor, I often take the bait and read these articles to see if there is content that I've missed. As a securities litigation lawyer and a Certified Private Wealth Advisor® professional, I wanted to shed some light on these flashy headlines and explore their real value.

Nick Murray and the Brinson Study

In the field of investment counseling, the book "Behavioral Investment Counseling" by Nick Murray is widely regarded as a seminal work. In it, Murray emphasizes that real-life actual returns are only marginally affected by market timing and security selection (i.e., whether one buys stock in Raytheon, Northrop Grumman, or General Dynamics). Rather, the typical investors' investment returns are driven by their behavior, often reacting to the latest headlines and short-term market swings.

Murry points out that financial headlines are written to get people to read the article. Thus, Money magazine never has a headline story about the "Brinson study"[1] which analyzed data from 91 large U.S. pension plans over the 1974-83 period and found that investment policy/asset allocation dominate market timing and stock selection. Specifically, it found that asset allocation accounted for over 90% of returns and less than 10% came from market timing, stock selection, and other variables. Despite this evidence, the media often focuses on short-term stock picks and market forecasts rather than long-term asset allocation strategies.

Forecasts Are Akin to a Flip of a Coin

The "Guru Grades" study conducted by the CXO Advisory Group delved into the accuracy of stock market forecasts provided by 68 experts over a significant period from 2005 through 2012.[2] These self-proclaimed experts employed various indicators like technical analysis, fundamental analysis, and sentiment analysis to make their predictions. The study collected a staggering 6,582 forecasts for the U.S. stock market.

The study's findings were eye-opening and shattered the illusion of stock gurus possessing extraordinary market timing abilities. On average, the accuracy of all forecasts was barely above 47%, which is no better than flipping a coin. The distribution of accuracy among gurus followed a bell curve, suggesting that their predictions were akin to random outcomes.

Some prominent names in the financial world, who frequently appear on media outlets and are revered as market experts, were among the contestants in this analysis. However, their accuracy scores were surprisingly mediocre. Figures like Jeremy Grantham, Mark Faber, Jim Cramer, and Abby Joseph Cohen had accuracy scores ranging from 35% to 48%. Only five gurus out of the 68 had accuracy scores above 60%, and none achieved a score as high as 70%.

Another study on market forecasts, intended to build upon the study by the CXO Advisory Group, came to a similar conclusion.[3] The study examined the accuracy of forecasts

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made for the S&P 500 Index. Their research reinforced the notion that market experts' forecasts were no more reliable than those made randomly. Their results showed that while some gurus had performance results that were stellar, the majority performed at levels not significantly different than chance. Across all forecasts, the accuracy was again below 50%, demonstrating that even professional forecasters were not consistently accurate.

The Perils of Relying on Forecasts

These studies uniformly reveal that acting on stock picks by stock gurus or expert market forecasts is unlikely to result in profitable investment decisions. In fact, relying on such forecasts can be detrimental to an investor's long-term financial goals. The temptation to act on predictions that align with one's own biases can lead to impulsive decisions, causing investors to stray from their well-constructed financial plans.

Advice from Warren Buffett[4]

In a 2013 letter to Berkshire shareholders, the legendary investor Warren Buffett warns against "forming macro-opinions or listening to market predictions." He said that such endeavors were a waste of time and, more importantly, can distort investors' understanding of crucial facts. Instead, investors are better served by having a robust financial plan that includes clear rebalancing targets, and they should remain committed to that plan despite short-term market fluctuations.

Conclusion

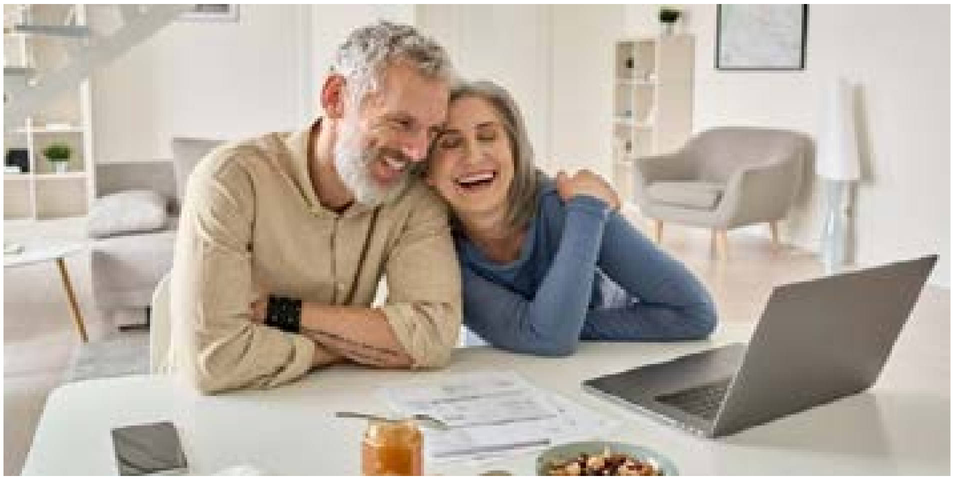
As a lawyer and financial advisor, my mission is to provide sound guidance to clients. The Guru Grades study and the research on market forecasts, along with insights from the book "Behavioral Investment Counseling" and the Brinson study, demonstrate that the allure of stock gurus' predictions is nothing more than click-bait. Investors must recognize that stock market timing is a challenging feat even for seasoned experts. Instead of chasing sensational headlines, investors are better served by working with a trusted financial advisor to develop a long-term financial plan that aligns with their unique goals and risk tolerance. A well-diversified portfolio, regular rebalancing, and the discipline to stick to the plan should ultimately lead to more successful and prosperous investment outcomes.

[1] Gary P. Brinson, L. Randolph Hood, and Gilbert L. Beebower, "Determinants of Portfolio Performance," Financial Analysts Journal, July/August 1986, available at https://www.jstor.org/stable/4478947.

[2] CXO Advisory Group, "Guru Grades," available at https://www.cxoadvisory.com/gurus/.

[3] David Bailey, Jonathan Borwein, Amir Salehipour, and Marcos López de Prado, "Do Financial Gurus Produce Reliable Forecasts?," SSRN, March 2019, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3339657.

[4] https://www.berkshirehathaway.com/letters/2013ltr.pdf



Supercharge Your Retirement Account – 5 Strategies

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Whether you're approaching retirement or planning for the years ahead, it's crucial to take proactive steps to fortify your financial future. In this article, EsqWealth shares five quick strategies tailored to individuals with substantial assets, designed to maximize your wealth accumulation as you prepare for retirement.

1. Maximize tax-advantaged contributions

Get the most out of your savings by maximizing tax-deferred contributions to your IRAs and 401(k) plans. In 2023, you and your employer can contribute up to a total of $66,000 to your traditional 401(k).[1] If you don't have a 401(k) or want to save more, you can contribute $6,500 to an IRA.[2]

2. Take advantage of catch-up contributions

If you are over age 50, you can exceed the standard annual contribution limits of your IRA and 401(k) accounts. This allows investors close to retirement to supercharge their savings, putting away more tax-deferred funds for the future. In 2023, you can use catch-up contributions to put away an additional $1,000 in your IRA and an additional $7,500 in your 401(k).[3]

3. Explore your HSA investment options

If you have a high-deductible insurance plan you can use an HSA to set aside pre-tax funds to spend tax-free on deductibles, co-pays, and other qualified medical expenses either now or in the future. If you're single, you can deposit up to $3,850 each year into your HSA, and up to $7,750 for family coverage for your spouse and/or children.[4]

HSA account holders can invest the funds in stocks, bonds, mutual funds, or ETFs, but only a small fraction take advantage of this option. According to a study by the Employee Benefit Research Institute, only 9% of HSA account holders currently invest their funds—everyone else is keeping their HSAs in cash.[5]

Investing allows your HSA funds to potentially grow over time. That can provide extra funds for health care costs now, and, after age 65, you can make taxable withdrawals from your HSA for any reason without penalty. Explore your HSA investment options with your financial advisor to maximize the potential of your HSA funds after you're no longer working.

4. Consider a Roth conversion

Roth IRA contributions are limited by how much you make. For the 2023 tax year, you can only contribute the maximum if your modified adjusted gross income (MAGI) is less than $138,000 ($218,000 if you're married filing jointly). Beyond this income threshold, your contribution limit is decreased until it phases out entirely at $153,000 for single filers, or $228,000 for joint filers.[6]

If you make too much money to fund a Roth IRA, you may be able to roll over funds from your traditional IRA account or from a 401(k) account to a Roth IRA to provide a bucket of tax-free income you can draw from when you retire. If these contributions were initially made pre-tax, when you roll the funds over to a Roth, you'll have to pay taxes on them. From there, they can grow tax-free, and you won't pay taxes on them when you make withdrawals.

Understanding the tax implications of a Roth IRA conversion becomes straightforward when you have only one traditional IRA. However, if you hold multiple IRAs, the process can become more intricate due to the IRS's pro-rata rule. This rule necessitates the inclusion of all your traditional IRA assets in the calculation, encompassing IRAs funded with both pretax (deductible) and after-tax (nondeductible) contributions. Consequently, you'll

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be required to pay taxes proportionate to the original account's pretax contributions and earnings, adding a layer of complexity to the conversion process.

5. Assess your annuity options

If you still have retirement money to invest after you've maximized your 401(k) and IRA options, an annuity may be suitable. An annuity is an insurance product that you can purchase with a lump sum of cash or a series of payments. Depending on the specific annuity, you may be able to access market upside while also guaranteeing a level of income in retirement. In May of this year, EsqWealth prepared an article about how annuities can be a powerful tool for retirement planning and a recession hedge.[7]

You have numerous avenues available to optimize your savings and secure a comfortable retirement income. Recognizing that each individual's financial circumstances are distinct, EsqWealth encourages you to get in touch with us should you have any queries or apprehensions regarding your particular situation. Together, let's ensure that your wealth is strategically managed to serve you impeccably during your retirement years. Your financial well-being is our priority.

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[1] "Retirement Topics – 401(k) and Profit-Sharing Plan Contribution Limits," IRS.gov, 25 October 2022, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-401k-and-profit-sharing-plan-contribution-limits

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[3] "Retirement Topics – Catch-Up Contributions," IRS.gov, 26 October 2022, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-catch-up-contributions

[4] "Publication 969 (2022), Health Savings Accounts and Other Tax-Favored Health Plans," IRS.gov, 1 February 2023, https://www.irs.gov/publications/p969

[5] "Publication 969 (2022), Health Savings Accounts and Other Tax-Favored Health Plans," IRS.gov, 1 February 2023, https://www.irs.gov/publications/p969

[6] "Amount of Roth IRA Contributions That You Can Make For 2023," IRS.gov, 15 March 2023, https://www.irs.gov/retirement-plans/amount-of-roth-ira-contributions-that-you-can-make-for-2023

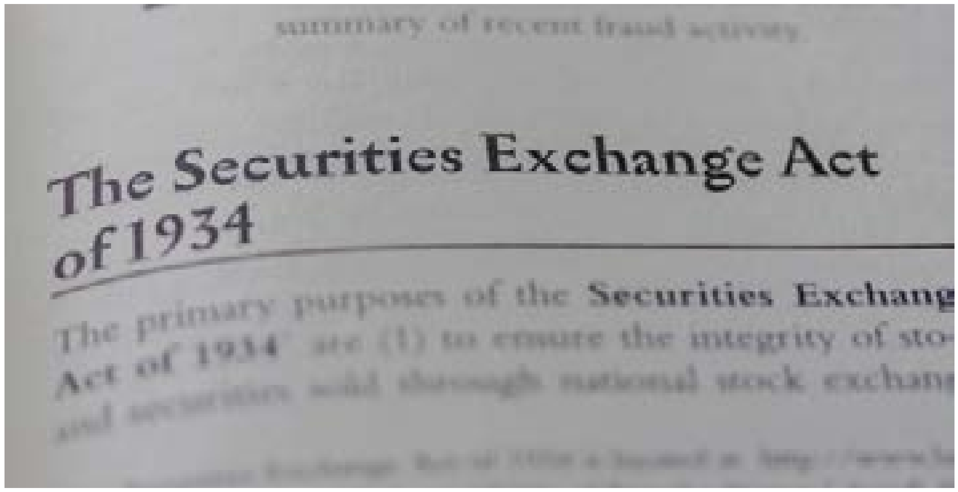
[7] "Today's Annuities: A Powerful Tool for Retirement Planning and a Recession Hedge," EsqWealth.com, May 16, 2023, https://www.esqwealth.com/articles/todays-annuities-a-powerful-tool-for-retirement-planning-and-a-recession-hedge

Casino Tycoon Steve Wynn Resolves Sexual Misconduct Allegations in $10 million Regulatory Settlement

Steve Wynn, a prominent Las Vegas casino magnate, has reached a $10 million settlement with the Nevada Gaming Commission over employee allegations of sexual misconduct. Under the terms of the settlement, Mr. Wynn—who has denied any wrongdoing—is also prohibited from any direct or indirect involvement in the state's gambling industry.

Mr. Wynn resigned from his casino empire in 2018 amid the allegations, which were published in a Wall Street Journal report and alleged he pressured certain employees into sex. Notably, the Nevada Gaming Commission also fined Wynn Resorts $20 million in 2019 for ignoring complaints about Mr. Wynn's behavior, highlighting the regulatory exposure attendant to an employer's failures to remediate and comprehensively investigate reports of harassment and discrimination.

Bridging "The Gap": Ninth Circuit Puts Derivative §14(a) Claims in Limbo



On June 1, 2023, the United States Court of Appeals for the Ninth Circuit issued the decision *Lee v. Fisher*[1], which held that forum selection clauses in the bylaws of Delaware corporations were not void under the Securities Exchange Act's ("Exchange Act") anti-waiver provision[2]. However, tucked away in *Lee* is a discussion about whether a shareholder could bring a false proxy claim derivatively under §14(a) of the Exchange Act. Relying on a flawed analysis, the Court decided they could not be.

Lee v. Fisher delt with a derivative action brought on behalf of The Gap, Inc. ("Gap"), which included a §14(a) claim (which could only be asserted in federal court). Gap had a forum selection clause which required derivative actions to be brought in the Chancery Courts of the State of Delaware, Gap's state of incorporation. The forum selection clause did not have any exceptions for claims brought under the Exchange Act. The District Court dismissed the derivative action under the doctrine of *forum non conveniens*. On appeal, the Ninth Circuit panel affirmed the dismissal, and the derivative plaintiff sought an *en banc* hearing. This hearing resulted in the *Lee* decision.

The Court addressed numerous reasons why the District Court should be reversed, including that dismissal "would violate the federal forum's strong public policy of allowing a shareholder to bring a §14(a) derivative action."[3] The Court gives three reasons for rebutting this argument: (1) there is no such public policy; (2) §14(a) claims are direct claims; and (3) the Supreme Court has shifted away from implying private rights of action. The Court's reasoning for arguments (1) and (3) amount to a simple disagreement with the Supreme Court's recognition of derivative §14(a) claims in *Borak*[4]. However, the Court's reasoning under argument (2), if accepted, would create confusing and inconsistent rulings.

The Court begins by discussing the role of state law in filling the "gaps in [federal] statutes bearing on the allocation of governing power within the corporation should be filled with state law unless the

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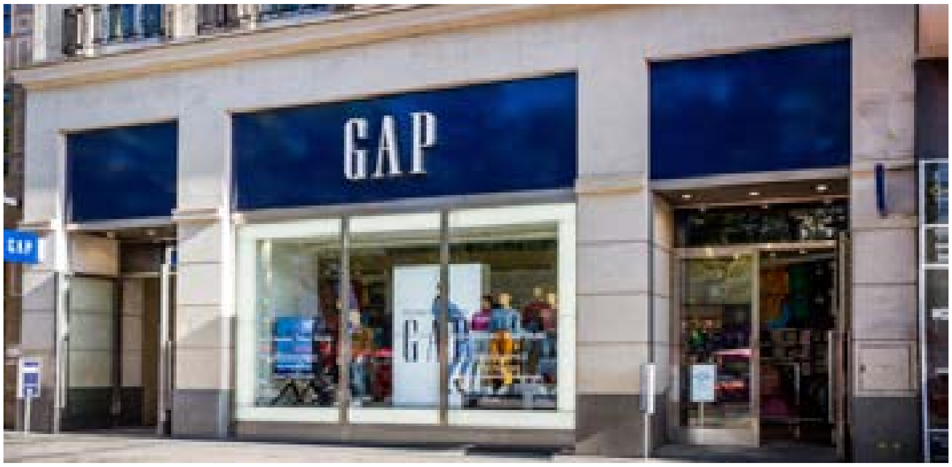

state law permits action prohibited by the [Exchange Act], or unless its application would be inconsistent with the federal policy underlying the cause of action."[5] The Court then proceeds to state that under Delaware law, claims such as §14(a) would be direct rather than derivative. However, the Court obscures the relevant Delaware law.

The Court cites *In re J.P. Morgan Chase & Co. Shareholder Litig.*, 906 A.2d 766, 772 (Del. 2006) for the proposition that "the injury caused by a violation of §14(a) gives rise to a direct action under Delaware law, not a derivative action." However, *In re J.P. Morgan* **recognizes** corporate injury from proxy statements, "[t]o the extent the plaintiffs' claim is that the compensatory damages worth $7 billion flow from the disclosure violation, that damages claim is derivative, not direct. **Even if it were assumed that improper proxy disclosures induced JPMC's shareholders to approve the merger (including the $7 billion overpayment), the harm resulting from the overpayment was to JPMC.** Therefore, any damages recovered would flow only to JPMC, not to the shareholder class."[6] (emphasis added). The *Lee* Court thus misstates the relevant Delaware law on proxy disclosure violations.

Further, even if the *Lee* Court's analysis on this point was correct, it would only apply to shareholders of Delaware corporations. While Delaware corporate law is influential throughout much of the United States, not all states wholly subscribe to it. As a result, if shareholders of corporations incorporated in any of the other 49 states file §14(a) claims derivatively, Federal Courts will be called upon to answer whether each of those states would follow Delaware law as the Ninth Circuit has misstated it. Thus, more confusion and potentially inconsistent rulings will likely follow.

The *Lee* Court's flawed analysis on whether §14(a) claims may be brought derivatively is contrary to Delaware law and as a result has placed such claims in limbo. *Lee* thus unfairly dissuades proper derivative claims from being filed in the Ninth Circuit under fear of dismissal.

[1] 70 F.4th 1129 (9th Cir. 2023).
[2] *See* §29(a) of the Exchange Act; 15 U.S.C. §78cc(a).
[3] *Lee*, 70 F.4th at 1143.
[4] *J.I. Case Co. v. Borak*, 377 U.S. 426 (1964).
[5] *Lee*, 70 F.4th at 1147. (Quotations omitted.)
[6] *Id.* at 722.

Johnson Fistel Helps to Secure Important Corporate Reforms at Fluor Corporation

Smith v. Hernandez, No. DC-20-10706 (116th Jud. Dist., Dallas Cnty., Tex.). Johnson Fistel, as part of a team of plaintiffs' counsel, helped to secure valuable corporate reforms ("Reforms") for Fluor Corporation ("Fluor" or the "Company"). Specifically, the Settlement resolved breach of fiduciary duty and related stockholder claims predicated on allegations that certain members of Fluor's management and Board of Directors ("Board") failed to implement a system of internal controls and reporting to adequately monitor the Company's bidding on, and the execution of, fixed-price contracts; and, as a result, (i) failed to exercise adequate project or risk management and oversight; and (ii) falsely assured stockholders that the Company's fixed price projects were more profitable than they actually were. The Settlement directly addresses the alleged wrongdoing by committing Fluor to adopt and maintain for a period of at least four (4) years a set of management- and Board-level measures addressing project and risk management and oversight and performance-based compensation safeguards. The Settlement also requires Fluor to allocate adequate funding for the risk management and corporate governance enhancements, which are estimated to be approximately $10 million over four years. The Reforms, taken together, will reduce the chances that Fluor and its stockholders will suffer a loss of investor confidence and legal exposure moving forward; enhance the value

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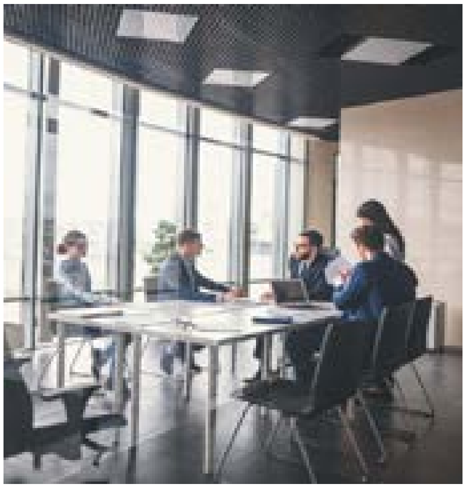
of the Company through improved project and risk management, oversight, and decision-making; and help boost investor confidence in the integrity of the Company's management and the effectiveness of its governance and oversight regime. Defendants acknowledged that the changes to Fluor's risk management structure are in direct response to the events at issue in the derivative complaints and that the commencement and settlement of the derivative actions were a material cause of the corporate governance changes provided for in the Settlement. Further, the Board, including its independent, non-defendant members, determined, in an exercise of its business judgment, that the Reforms are in the best interests of the Company, and approved their implementation and maintenance.

Michael I. Fistel, Jr. led the prosecution of the litigation for Johnson Fistel and, along with co-counsel, helped achieve this superb result on behalf of Fluor and its stockholders.

Johnson Fistel Helps to Secure $13.9 million for D-MARKET Electronic Services & Trading d/b/a/ Hepsiburada Shareholders

Benson v. D-Market Elektronik Hizmetler ve Ticaret Anonim Sirketi et al., Index No. 655701/2021 (Sup. Ct. N.Y. Cnty.). Johnson Fistel served as Co-Lead Counsel in a securities class action alleging violations of §§11 and 15 of the Securities Act of 1933. The complaint alleges that Defendants violated the Securities Act of 1933 by making materially false and misleading statements, as well as failing to disclose material information that was required to be disclosed, in the Company's Registration Statement for its IPO. Specifically, Plaintiffs alleged that Defendants failed to disclose material information regarding (i) Hepsiburada's substantial slowdown in growth in 2Q21, i.e., before the IPO; (ii) the negative impact to Hepsiburada's business and operations as of the IPO caused by Turkey's easing of COVID-19 lockdown restrictions, particularly the weekday reopening of marketplaces and shopping malls in May 2021; and (iii) Hepsiburada's need to make significant investments and customer discounts prior to the IPO to offset these negative developments. As a result, the complaint alleged that Plaintiff and the Class suffered damages in connection with their purchases of publicly traded Hepsiburada American Depository Shares sold in the IPO. The case was resolved on a class-wide basis for $13.9 million, which was approved on August 1, 2023.

Attorneys Frank J. Johnson, Michael I. Fistel, Jr., Ralph M. Stone, 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 the Class.



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Johnson Fistel Helps to Secure $84 Million Partial Settlement for Former Bioverativ, Inc. Investors

Goldstein v. Denner, C.A. No. 2020-1061-JTL (Del. Ch.). Johnson Fistel serves as additional counsel in a securities class action involving allegations that former officers and directors of Bioverativ breached their fiduciary duties in the sale of Bioverativ to Sanofi S.A. in 2018. The settling defendants agreed to have $84 million paid to former Bioverativ shareholders in exchange for dismissal of claims that those defendants failed to maximize the value of Bioverativ in the sale. The court approved the partial settlement on September 13, 2023.

The court also previously upheld, at the pleading stage, claims that Bioverativ director Alexander Denner and his hedge fund, Sarissa Capital, engaged in insider trading in violation of Delaware law by trading on material non-public information about Sanofi's desire to buy the company. Johnson Fistel, together with lead counsel, is continuing to litigate those claims, seeking disgorgement of Denner's and Sarissa Capital's substantial ill-gotten profits plus interest. Trial on those claims is scheduled for April 2024. "We are pleased to deliver this substantial result for Bioverativ shareholders, and we look forward to holding Dr. Denner and Sarissa accountable at trial," said lead plaintiff Dr. Stewart N. Goldstein, M.D., an investor and physician in California.

Attorneys Frank J. Johnson, Brett M. Middleton, and Jonathan M. Scott are leading the prosecution of the litigation for Johnson Fistel and, along with Lead Counsel, helped achieve this superb result on behalf the Class.

Recent Accomplishments

In re APA Corporation Derivative Litig., Lead Case No.: 4:23-cv-00636 (S.D. Tex.): Johnson Fistel was appointed as Co-Lead Counsel in this shareholder derivative action asserting claims on behalf of APA Corp. ("APA" or the "Company") for breaches of fiduciary duties and other violations of Delaware and federal law against certain current and former officers and directors of APA. APA, a Delaware corporation headquartered in Houston, Texas, is an oil exploration and production company whose single most important asset during the Relevant Period was an oil and gas field in the Texas panhandle called "Alpine High." The complaint alleges that for years, the Individual Defendants touted Alpine High as a "transformational discovery" and "world class resource play" with immense production capabilities, including "conservative" estimates of over 3 billion barrels of oil and significant amounts of "really rich gas." The Individual Defendants supported these claims by highlighting examples of "strong well results" and "successful oil tests" that were purportedly representative of Alpine High's "2,000 to more than 3,000 future drilling locations," which would "deliver incredible value to Apache and its shareholders for many, many years to come." Analysts and industry media lauded this "massive shale discovery," emphasizing that Alpine High's "compelling economics" represented APA's "largest catalyst opportunity" for the coming years and put APA "back in the game" after a "rough time keeping

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up with competitors." The complaint further alleges that, fueled by the Individual Defendants' repeated public assurances, APA's stock price soared, reaching a Relevant Period high of $69 per share on December 12, 2016. And, the Individual Defendants took full advantage, collectively reaping approximately $78 million in Alpine High-linked executive compensation from 2016 through 2019. As alleged in the complaint, unbeknownst to shareholders, the Individual Defendants' public statements were false. In truth, internal production data and analyses of the Alpine High play never supported the Individual Defendants' representations to stockholders. As the Individual Defendants would ultimately be forced to admit, Alpine High was virtually barren. Indeed, after three years of relentlessly touting Alpine High to stockholders, the "world class resource play" that was supposedly going to "transform" the Company produced less than 1% of the oil and gas the Individual Defendants had represented to stockholders was recoverable. Plaintiffs contend the alleged wrongdoing has damaged APA's reputation, goodwill, and standing in the business community, and exposed the Company to potential liability for violations of state and federal securities laws.

Whitfield v. Brown et al., Cause No. 79C01-2304-PL-000048 (Tippecanoe County Circuit Court, Indiana): Johnson Fistel was appointed as Co-Lead Counsel in this shareholder derivative action asserting claims on behalf of Inotiv, Inc. ("Inotiv" or the "Company") for breaches of fiduciary duties, corporate waste, and unjust enrichment against certain current and former directors and officers of Inotiv. Inotiv is a contract research organization ("CRO") based in West Lafayette, Indiana, that specializes in providing nonclinical and analytical drug discovery and development services to customers in the pharmaceutical, chemical, and medical device industries, as well as to academic and governmental research institutions. Like other CROs, Inotiv uses live animals to test the safety and effectiveness of experimental drugs and other products in the ordinary course of its business. The complaint alleges that the Individual Defendants caused the Company to issue false and misleading statements and material omissions in connection with Inotiv's acquisition of Envigo, a leading commercial provider of research animals and related services, as well as false and misleading statements and material omissions concerning the Company's non-human primate-related business and related risks, including but not limited to the January 2022 acquisition of Orient Bio Resource Center ("OBRC"), a leading importer of non-human primates used in research. While Inotiv was conducting its due diligence for this "transformational" acquisition, the U.S. Department of Agriculture was conducting inspections of Envigo's large-scale beagle breeding facility in Cumberland, Virginia (the "Cumberland Facility") and citing Envigo with numerous critical violations of the Animal Welfare Act ("AWA"). The complaint alleges that these serious violations, and issues related to a separate grand jury subpoena that had been served on Envigo in June 2021 in connection with its non-human primate importation business, were concealed, omitted, or otherwise not disclosed from investors starting when the Envigo acquisition was announced. Similarly, according to the complaint, the Individual Defendants concealed from investors that OBRC had also been served with a grand jury subpoena regarding the importation of non-human primates in June 2021 as part of the same federal criminal probe in which the subpoena to Envigo was issued and in which employees of the Company's "principal supplier of non-human primates" and two officials of the Cambodian government were indicted on multiple charges. As a result of the alleged misconduct, Inotiv is facing regulatory and civil investigations and actions exposing the company to millions in damages, in addition to harm to the Company's goodwill and reputation among investors and the business community and loss of market capitalization of hundreds of millions of dollars, among other damages.

Maglia v. Steiner, et al., Case No.: 2023-019406-CA-01 (Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida): Johnson Fistel was appointed as Lead Counsel in this shareholder derivative action asserting claims on behalf of Veru, Inc. ("Veru" or the "Company") alleging breaches of fiduciary duty (and related claims) against certain current and former officers and directors of Veru. Veru is a biopharmaceutical company with a focus on oncology. The Company has

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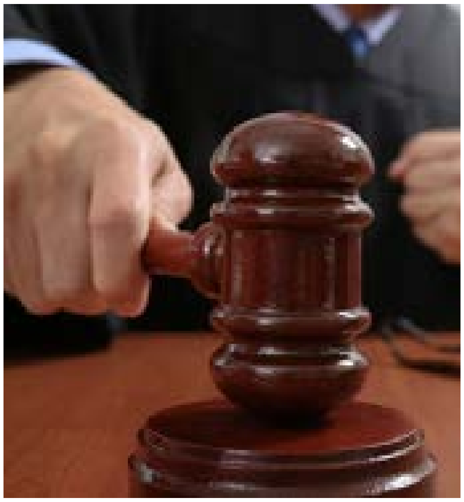
developed a number of drugs for the management of breast and prostate cancer, along with two FDA-approved products linked to sexual health. The complaint alleges that during the relevant period, the Individual Defendants made, or caused Veru to make, multiple public statements regarding the success of the Company's sabizabulin trials and the impact this success was having with respect to obtaining FDA approval for an EUA—and ultimately obtaining approval to manufacture and distribute the drug. For instance, on May 11, 2022, Veru issued a press release detailing a May 10, 2022, pre-EUA meeting with the FDA. The release claimed that the FDA "agreed that the efficacy and safety data from the completed Phase 3 clinical study in hospitalized COVID-19 patients at high risk for acute respiratory distress syndrome are sufficient to support the submission of a request for Emergency Use Authorization" and that "additional safety data that would be collected during the use of sabizabulin under the EUA, if granted, will be sufficient to support an [New Drug Application ("NDA")] submission, and furthermore, that no additional safety clinical studies are required." Unbeknownst to stockholders, as alleged in the complaint, the statement above—as well as similar statements during the relevant period—was materially false and/or misleading. In truth, the data obtained from Veru's Phase 3 trials of sabizabulin was not sufficient—and the FDA did not agree such data was sufficient—to support a request for an EUA to treat COVID. The complaint alleges that the Individu-

al Defendants' false and misleading statements began to emerge on November 9, 2022. On this date, the FDA's Pulmonary-Allergy Drugs Advisory Committee ("AdCom") voted against granting Veru's EUA, with one committee member even stating that there was "no direct evidence to support [sabizabulin's] antiviral activity." While AdCom recommendations are nonbinding, the FDA normally follow's them, thus making the decision a devastating blow to sabizabulin's prospects as a COVID treatment. The AdCom decision was also in direct contradiction to the multiple public statements made by, or caused to be made by, the Individual Defendants that assured stockholders that sabizabulin was receiving positive assessments from the FDA. The complaint alleges that the AdCom's recommendation to reject Veru's request for EUA, coupled with the Individual Defendants' repeated prior misrepresentations regarding the positive prospects of sabizabulin, had a damaging impact on the Company's value. On November 10, 2022, Veru's stock price plummeted to $6.97 from its price of $15.01 just days before on November 8, 2022. This represented a 54% one-day drop, wiping out over $640 million in market capitalization. According to the complaint, the bad news continued for Veru when, on March 2, 2023, the Company revealed that the FDA refused to grant the Company's request for EUA for sabizabulin. On this news, Veru's stock dropped even further, falling from $3.78 on March 2, 2023, to $2.42 on March 3, 2023. As detailed in the complaint, these alleged wrongdoings have resulted in hundreds of millions of dollars in damages to Veru's reputation, goodwill, and standing in the business community, as well as exposed the Company to potential liability for violations of law.



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.

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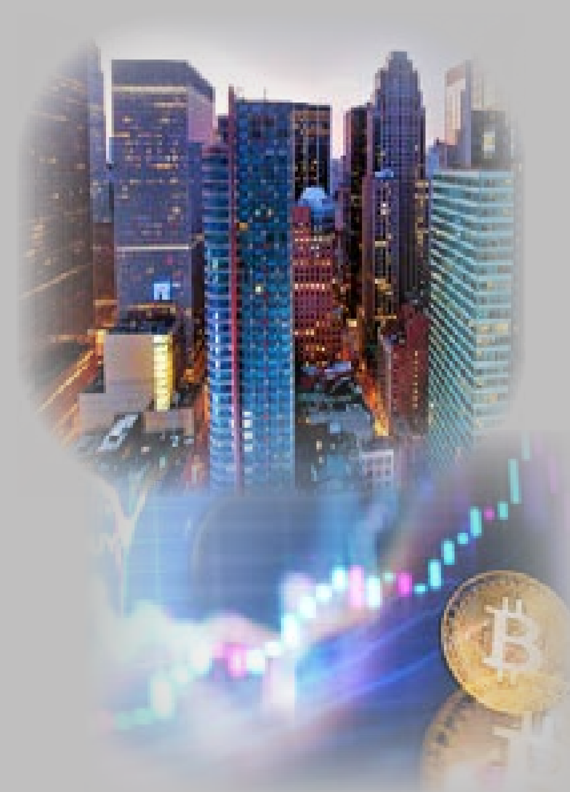

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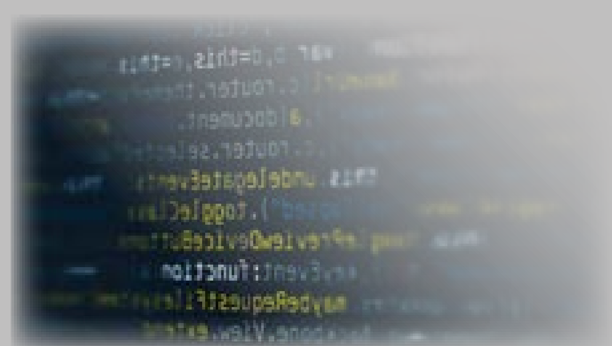

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JF JOHNSON FISTEL

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

Contact Us

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

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