

**09-1403 ERICA P. JOHN FUND, INC. V. HALLIBURTON CO.**

DECISION BELOW: 597 F.3d 330

LOWER COURT CASE NUMBER: 08-11195

QUESTION PRESENTED:

1. Whether the Fifth Circuit correctly held, in direct conflict with the Second Circuit and district courts in seven other circuits and in conflict with the principles of *Basic v. Levinson*, 485 U.S. 224 (1988), that plaintiffs in securities fraud actions must satisfy not only the requirements set forth in *Basic* to trigger a rebuttable presumption of fraud on the market, but must also establish loss causation at class certification by a preponderance of admissible evidence without merits discovery.
2. Whether the Fifth Circuit improperly considered the merits of the underlying litigation, in violation of both *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974), and Federal Rule of Civil Procedure 23, when it held that a plaintiff must establish loss causation to invoke the fraud-on-the-market presumption even though reliance and loss causation are separate and distinct elements of security fraud actions and even though proof of loss causation is common to all class members.

CERT. GRANTED 1/7/2011