

For Immediate Release

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Katten Wins Key Decision in Consolidated Securities Action on Behalf of 30 Moving Issuer Defendants

CHICAGO – A federal judge has dismissed complaints targeting the initial public offerings (IPOs) of 54 companies and their stock underwriters, ruling that the plaintiff, a single investor suing companies that went public in the late 1990s and early 2000, made an insufficient demand on the issuers and that the cases did not merit tolling the statute of limitations.

Judge James L. Robart of the U.S. District Court for the Western District of Washington dismissed 30 of the complaints without prejudice, citing “lack of subject matter jurisdiction,” and dropped the remaining 24 complaints with prejudice based on the underwriters’ claim that the two-year statute of limitations had elapsed for the claims.

During a 10-day period in October 2007, Vanessa Simmonds, a college student whose father is a securities plaintiffs’ lawyer, filed 55 suits against companies seeking disgorgement of profits from the underwriters, which included notable giants JPMorgan Chase & Co., Bank of America Corporation and Credit Suisse Securities (USA) LLC, on behalf of the nominal defendant issuers under Section 16(b) of the Securities and Exchange Act. One of the cases was dropped in April 2008, but in the remaining 54 complaints, Ms. Simmonds sought to test a “complex and novel” theory for liability under the act.

Ms. Simmonds’ suits are based on a 2001 case, *In re Initial Public Offering Securities Litigation* in the U.S. District Court for the Southern District of New York, in which plaintiffs targeted the same underwriters and nearly all of the same issuers as in Ms. Simmonds’ case, claiming that the underwriters had collaborated to defraud public investors. The suits, which totaled more than 1,000, alleged that banks had profited from short-swing stock sales made by customers purchasing IPO shares. Judge Robart noted that the only differentiating factor between the previous cases and those of Ms. Simmonds’ was her acquisition of shares of stock from the defendant issuer companies. Section 16(b) of the Securities and Exchange Act also requires shareholders to make adequate demands of the company before filing suit, a requirement that the judge found Ms. Simmonds had not properly met in 30 of the cases.

David H. Kistenbroker, co-chair of the National [Securities Litigation Practice](#) at **Katten Muchin Rosenman LLP** in Chicago, served as lead counsel for 26 of the 30 moving issuer defendants, which included Martha Stewart Living Omnimedia, Inc., TheStreet.com, Inc., priceline.com Incorporated and Perot Systems Corporation. Mr. Kistenbroker and **Joni S.**

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[Jacobsen](#), a Chicago-based partner in Katten's Securities Litigation Practice, were also appointed as liaison counsel for all 55 issuers named as nominal defendants.

"We are pleased with Judge Robart's decision in this matter and commend him for an outstanding job of clarifying the law of demand under Delaware law," Mr. Kistenbroker said. "In addition, his thoughtful appreciation of the Ninth Circuit precedent on the statute of limitations was extremely gratifying."

Katten's Securities Litigation Practice is nationally recognized for its experience and record of success in defending clients in shareholder securities class actions, corporate governance cases, internal investigations, regulatory enforcement proceedings, and Department of Justice prosecutions. Its attorneys have obtained early dismissals of cases around the country and work aggressively to narrow the plaintiff's allegations, limit costly discovery and tailor the defense to the precise needs of the case and the client. The practice's attorneys represent corporations, financial institutions, entrepreneurial enterprises, investment advisory firms, individual officers and directors, and broker-dealers in federal, state and administrative forums throughout the country.

Founded in 1974, Katten Muchin Rosenman LLP is a full-service law firm with more than 600 attorneys in locations across the United States and an affiliate in London. The firm's business-savvy professionals provide clients in numerous industries with sophisticated, high-value legal services, with a focus on corporate, financial services, litigation, real estate, commercial finance, intellectual property and trusts and estates. Among our clients are a wide range of public and private companies, including nearly a third of the Fortune 100, as well as a number of government and nonprofit organizations and individuals. For additional information, visit www.kattenlaw.com.

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