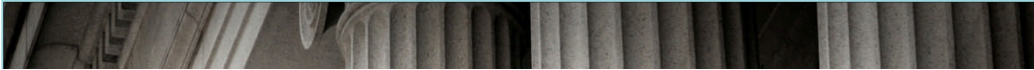


Using Courts when Unsustainable Behavior Harms Shareholders –

Pfizer (US), Fortis (NL),
Olympus (J) & others

Dr. Deborah Sturman,
Sturman/Motley Rice, USA

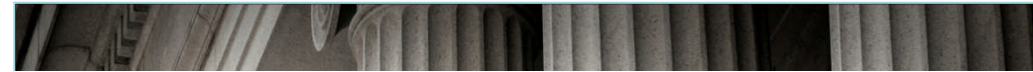


What is Unsustainable Behavior?



Unsustainable Behavior

- Management failures
 - Alleged failure to implement internal controls allowed for illegal behavior and corruption, e.g., Avon
- Societal failures
 - BP oil spill
- Economic failures
 - Insufficient regulation resulted in the financial crisis
- Corporate Governance failures
 - Enron; WorldCom



Impact and Response of non-sustainability



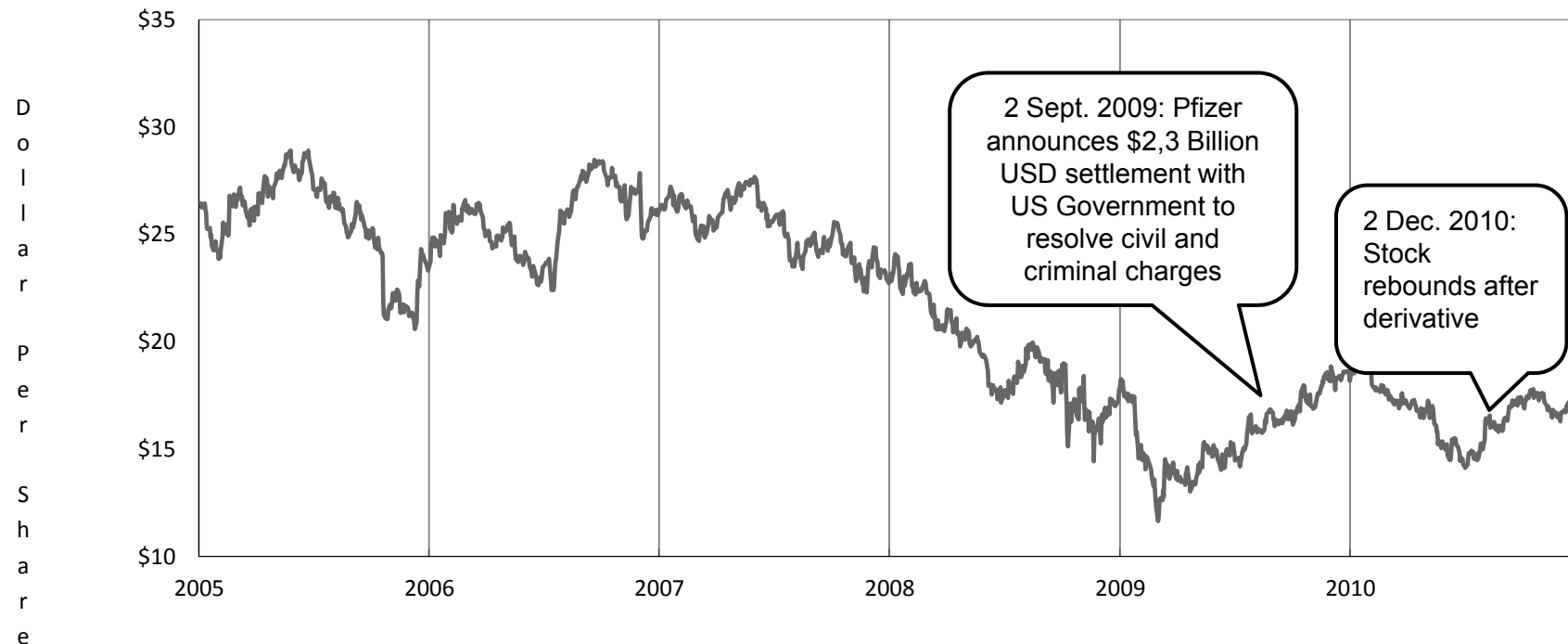
Pfizer, Inc. (USA)

- Alleged illegal marketing of at least 13 of the company's most important drugs
- Top Management knew of these “red flags”
- Alleged “off-label” use harmed patients and shareholders through costly civil and criminal settlements

Pfizer, Inc. (USA)

STOCK PRICE DURING DERIVATIVE ACTION

PFIZER, INC.: PFE



Pfizer, Inc. (USA)

Corporate Governance Reforms

- Regulatory and Compliance Committee created:
 - Oversee and monitor compliance and drug marketing practices
 - Review compensation policies for sales employees
- \$75 million USD fund established
- Ombudsman Program established

BP (USA)

- Deepwater Horizon explodes on 20 April 2010
- 11 workers are killed
- Approximately 780 million liters of crude oil spilled
- Market cap drop of \$91 billion USD

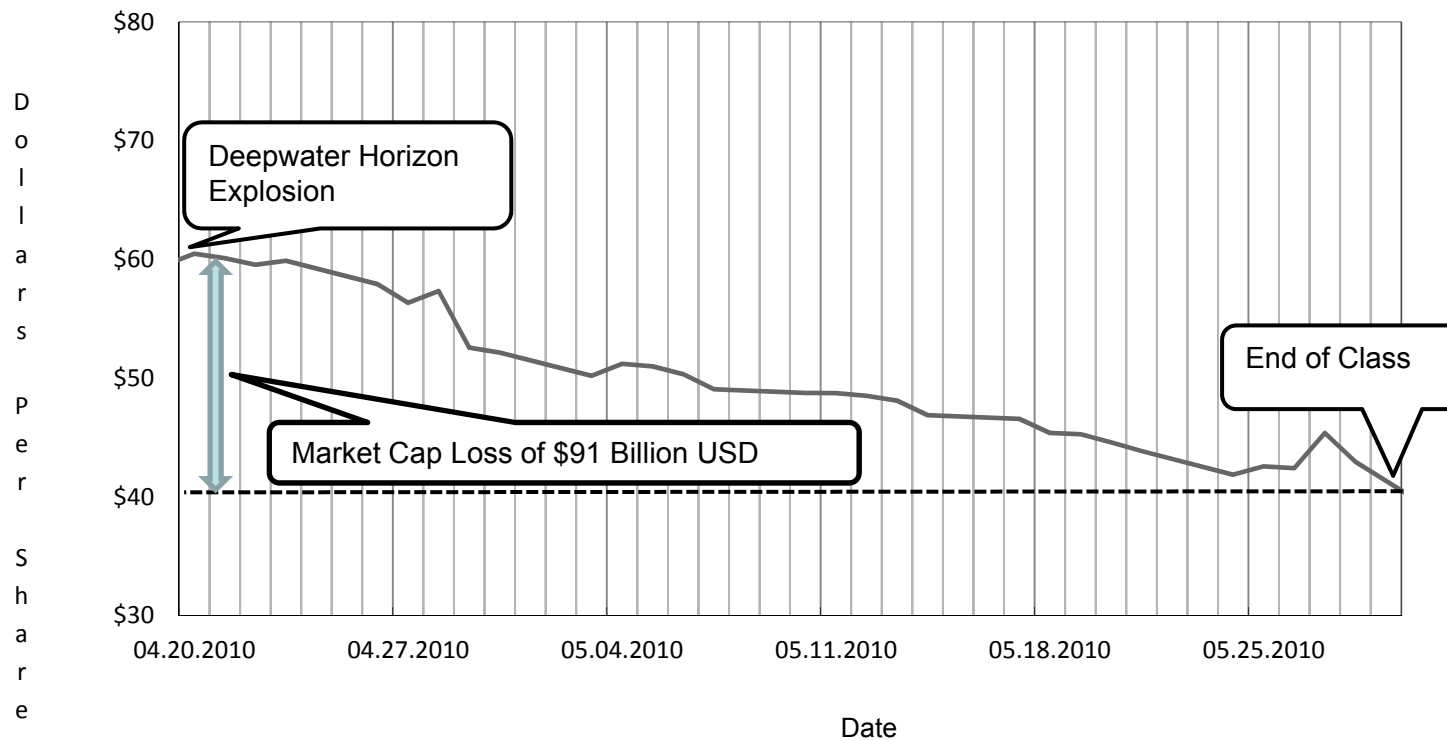
BP (USA)

- Suggested corporate governance changes:
 - Senior management accountability for safety, health and the environment
 - Full disclosure to shareholders about the societal and environmental risks associated with BP's business ventures
 - A commitment to be listed as a “socially responsible investment fund”

BP (USA)

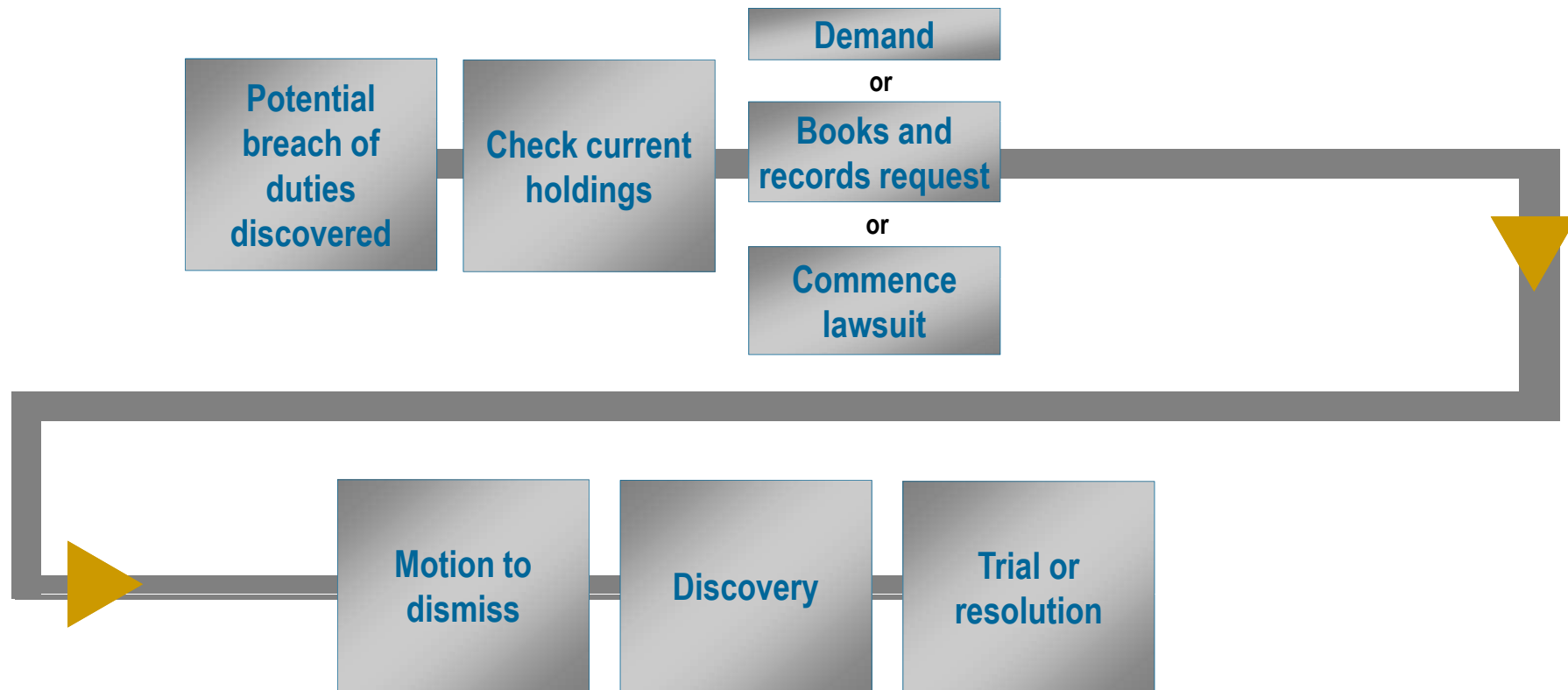
STOCK PRICE REACTION TO EXPLOSION

BP PLC: BP



Stages of a Derivative Case

Goal: Corporate governance changes / restore value

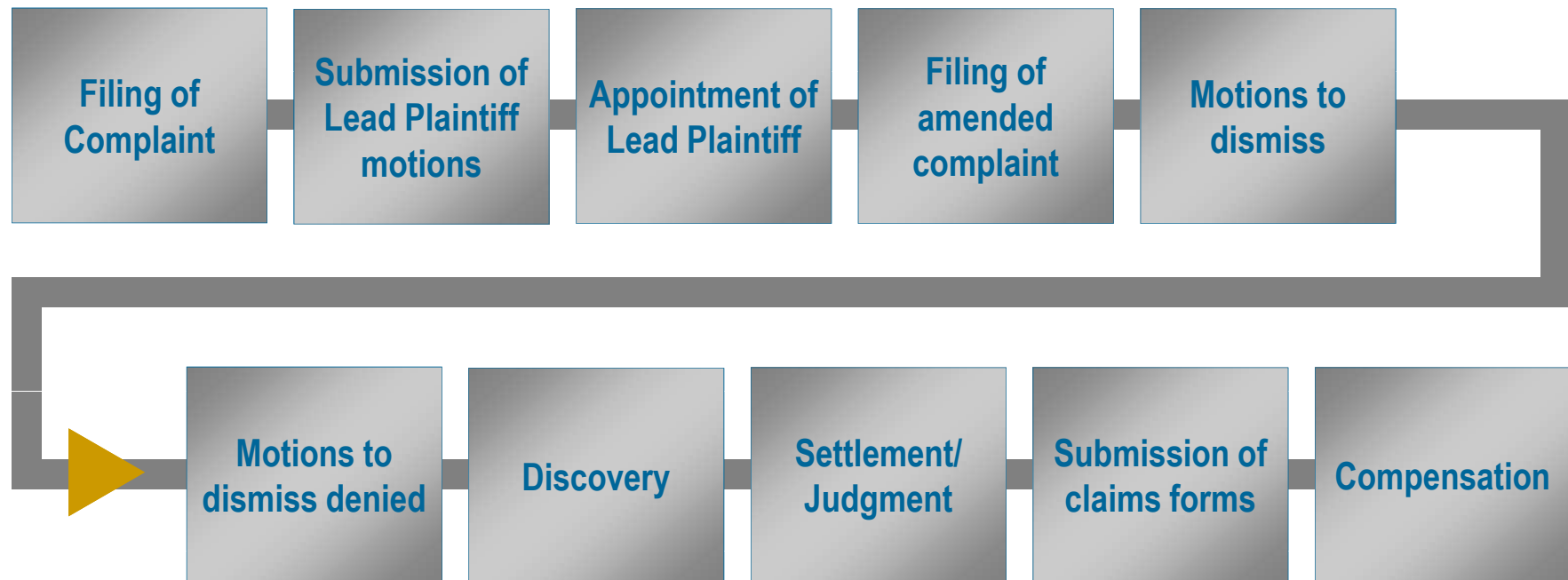


Shareholder Derivative Actions

- Plaintiff stands in the shoes of the company and asserts its claims
- Hold Directors and Officers personally accountable so that shareholders don't bear the costs of their wrongdoing
- Deter and prevent future misconduct
- Protect long-term shareholder value through corporate governance practice that encourages sustainability

Stages of a Securities Class Action (10b-5 case)

Goal: Compensation for Fraud



Securities Fraud

Securities fraud occurs when a company makes materially false statements to the public upon which investors rely.

When the truth is disclosed, the stock price declines to reflect the true value of the stock. Losses incurred are typically compensable in U.S. courts.



Securities Litigation after *Morrison*



Foreign Claimants in U.S. Courts

- A 2010 U.S. Supreme Court decision, *Morrison v. National Australia Bank Ltd.* (June 24, 2010), has changed the rules for foreign plaintiffs bringing securities actions in U.S. Courts.
- The “conduct-and-effects” test no longer applies – prior to *Morrison*, jurisdiction was based on facts involving either substantial wrongful conduct in the U.S. or wrongful conduct that had a substantial effect in the U.S. or on U.S. citizens.

Foreign Claimants in U.S. Courts

- Despite the *Morrison* decision, foreign investors may still bring U.S. securities fraud claims.
- The "Transactional" test is now used for determining the extraterritorial reach of the U.S. securities laws.
- The provisions of the Exchange Act (10b-5 actions) apply to "transactions in securities listed on domestic exchanges" and to claims relating to "domestic transactions in other securities."

Foreign Claimants in U.S. Courts

- The U.S. courts will still be open to foreign institutional investors because they buy and sell vast amounts of U.S. financial assets ever year.
- ***In 2008, foreigners purchased \$38 trillion dollars in U.S. financial assets and sold \$37.8 trillion dollars in assets.***

Source: James K. Jackson, Foreign Investment in U.S. Securities. CRS Report for Congress: Prepared for Members and Committees of Congress. 7-5700. RL32462. (November 18, 2009).

Foreign Claimants in U.S. Courts

- European institutional investors can and should play a role in U.S. securities actions.
- The largest losses provide significant motivation and opportunity.
- Foreign and U.S. investors can suffer similar losses.
- The transaction patterns of funds can give rise to significant grounds to seek appointment as Lead Plaintiff; it can have significant economic advantages.

Options: Securities Fraud Class Actions

Lead Plaintiff

Under PSLRA, investor with largest loss is presumptive lead plaintiff

Opt-Out

Appropriate under certain circumstances

Absent Class Member

Imperative: claims monitoring and processing

Other U.S. Options Following *Morrison* Decision

- Assign litigation rights to a U.S. based LLC
- LLC can then Opt-Out collectively with losses aggregated and increase potential recovery
- LLC can minimize potential *res judicata* issues (for example when a U.S. court refuses to include investors from certain countries in the class)
- File lawsuit on behalf of LLC, individual investors are not “named” in the lawsuit



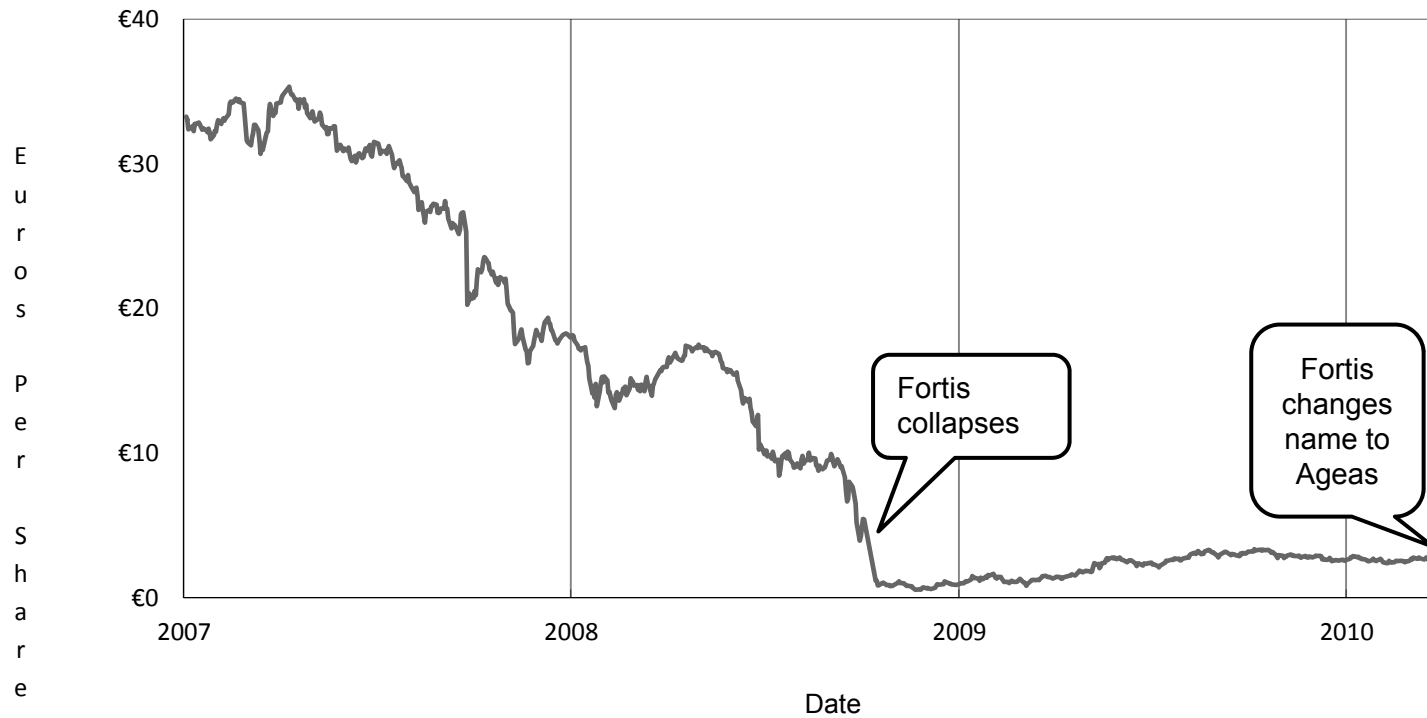
Dutch Securities Actions



Fortis (Holland)

STOCK PRICE DURING RELEVANT PERIOD

FORTIS: FOR NA



Fortis (Holland)

- Fortis covered up sub-prime exposure, solvency, and liquidity issues
- Investors lost up to 90% of value of investments
- From 2007 to 2008, shareholder equity fell from €33 billion to €6.8 billion

Fortis (Holland)

- Class actions filed in the United States were dismissed, leaving lawsuits in Holland as the best alternative for investors
- The Stichting Investor Claims Against Fortis (the Foundation) was established to seek a declaratory judgment against Fortis
- The Foundation has received assignments of claims from investors and is pursuing those claims in Dutch court



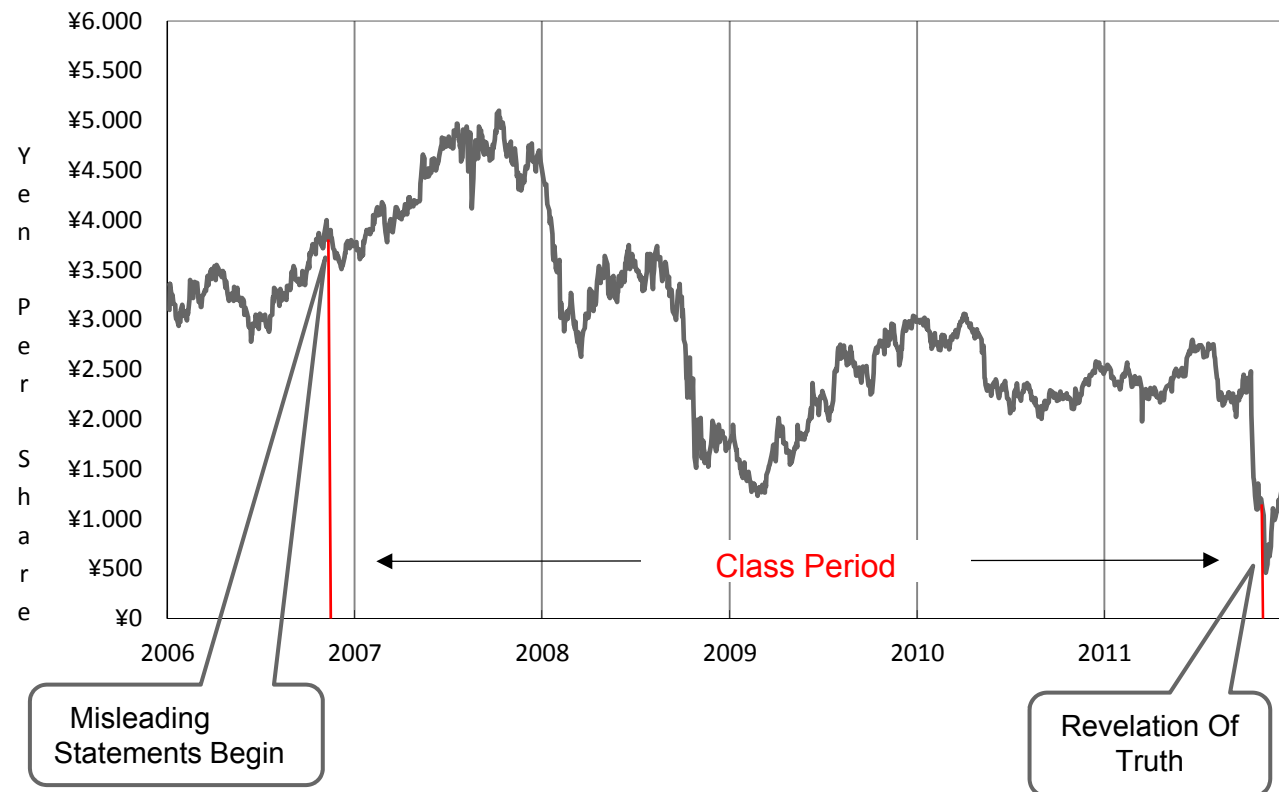
Japanese Securities Actions



Olympus Corporation (Japan)

STOCK PRICE DURING CLASS PERIOD

OLYMPUS CORPORATION: 7733.T



Olympus Corporation (Japan)

- Scheme to remove toxic assets from balance sheet under the cover of legitimate acquisitions
- Board of directors and management knew of practices
- Stock value lost 80% of value

Olympus Corporation (Japan)

- 2004 amendment to the Financial Instruments and Exchange Act (FIEA) allows secondary market investors to bring misstatement claims on the same terms as primary market investors
- Previously, secondary market investors could only bring claims under general tort law
- Claims under the FIEA reduce burdens on plaintiffs, making it easier to establish liability



Discussion





Loss Recovery & Corporate Governance Reform



Foreign investors are members of the class, whether they know it, like it, or not

- Securities class actions affect the claims of all shareholders who purchased the defendant company's shares during the class period.
- All costs are deducted from the entire settlement amount.
- Failure to file claims is comparable to failing to cash a dividend check. In some cases, it might also be a breach of fiduciary duty.

What should European institutional investors do?

European institutional investors should be familiar with U.S. and international securities class actions, resulting settlements, and derivative actions to act conscientiously, either:

- **as observers** – as a member of the class
- **as participants** – as a lead plaintiff acting on behalf of the class, selecting counsel, and determining the procession of the case

What do your investors expect?

Your shareholders expect that you act as the fiduciary of their assets by ensuring that:

- Damages are compensated
- All available settlement funds are claimed
- Improvements in Corporate Governance are achieved that reestablish a sound basis for future investment decisions
- You are committed to investing in companies that practice and encourage sustainability

What steps are necessary?

- Monitor your portfolio
(Motley Rice and Sturman LLC Portfolio Monitoring Services)
 - Monthly by fax or email
 - Continually through Online-Monitoring
- Monitor ongoing cases and existing settlements
- Actively participate or observe cases in which your portfolio is significantly effected
- Proactively seek redress in the event compensable claims exist
- Proactively engage in seeking better terms or indeed to stop unfair mergers, takeovers, and management-led buyouts

Motley Rice and Sturman LLC

Securities Fraud Practice

The lawyers of **Motley Rice and Sturman LLC** are prominent in the field of US securities litigation. They assert and defend investor rights in all matters related to US and US-related investments.

Motley Rice lawyers represent US States, pension funds and institutional investors.

Sturman LLC represents European and other non-U.S. domiciled institutional investors as well as private investors in shareholder actions in the US and in Europe.

Both firms have achieved substantial recoveries through litigation and have significantly effected US corporate governance.

Deborah Sturman

Sturman LLC



- Represents European institutional investors in securities actions and advises them in connection with their Legal Portfolio Management and European plaintiffs in complex, international litigation in U.S. courts.
- Sturman was the initiator of the first class actions in U.S. courts on behalf of victims of WWII slave labour, representing the class in In re Holocaust Victim Assets Litigation and leading to recoveries of approximately \$5 billion.
- Sturman has been profiled in the Wall Street Journal, the Financial Times and was named runner-up Lawyer of the Year by the National Law Journal.
- As a legal commentator, Sturman regularly appears in the German, Dutch, French, Swiss and Belgian media.
- She is fluent in German and Dutch/Flemish and conversant in French and Italian.

Motley Rice LLC

Motley Rice LLC is one of the largest plaintiffs' litigation firms in the U.S. The firm's attorneys gained recognition for their work on behalf of asbestos victims, the State Attorneys General in their landmark litigation against Big tobacco and the 9/11 families in their lawsuit against terrorist financiers.

The firm represents and advises victims of securities and consumer fraud, aviation disasters, human rights, occupational disease including mesothelioma, environmental contamination and defective drugs/ medical devices.



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