

# The Role Of Shareholder Litigation In Driving Corporate Governance Reforms

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# Private Shareholder Litigation

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- Private shareholder litigation is key to the functioning of the U.S. capital markets
- Provides vehicle for investors to recover losses caused by fraud or misconduct
- Also used to enact corporate governance reforms to prevent future misconduct and enhance shareholder value

# Why Shareholder Litigation?

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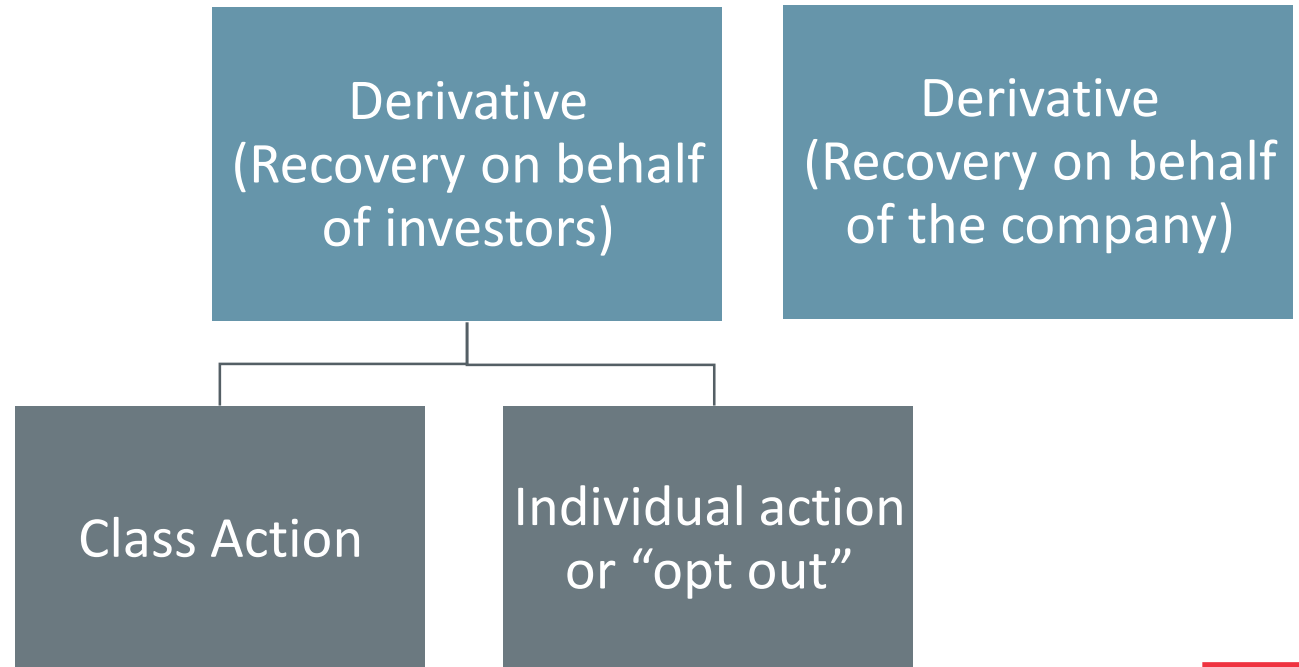
Private securities litigation is *an indispensable tool* with which defrauded investors can recover their losses, a matter crucial to the integrity of domestic capital markets.

– Justice Ruth Bader Ginsburg

# Confronting Losses Due To Fraud

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- File or seek to lead a Class Action
- File an individual (or “opt out”) action
- File a Derivative Action
- Do nothing



# Direct vs. Derivative Actions

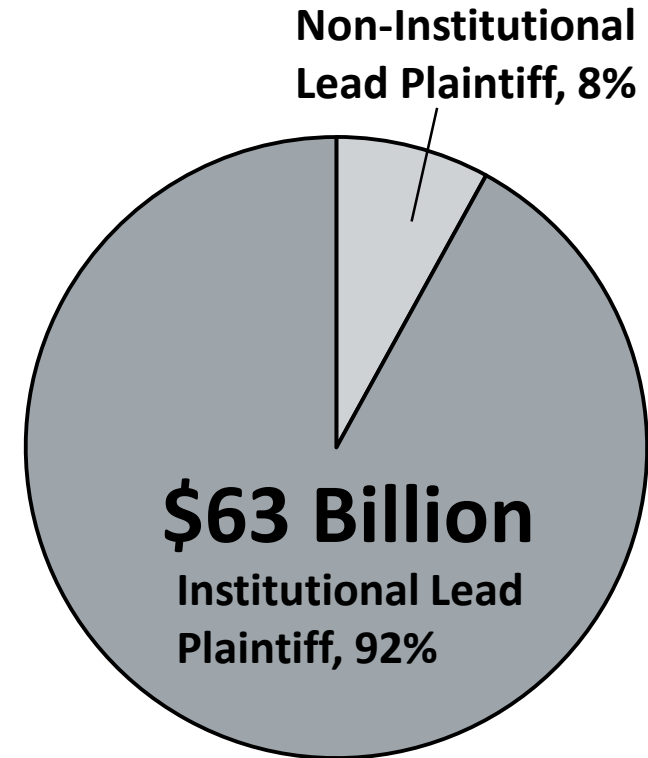
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- **Direct**
  - Shareholders incur losses or their personal rights are infringed
  - Shareholders receive the recovery
- **Derivative**
  - Brought on behalf of the company
  - Recovery belongs to the company
  - Demand requirement

# Institutions Achieve Best Results

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- Institutional investors negotiate higher settlements and lower attorneys' fees
- 92 of the top 100 securities class action recoveries were obtained by institutional investors
- Institutional investors are more likely to seek governance reforms



Source: ISS Securities Class Action Services

# McKesson Corporation

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**MCKESSON**

# Fuelling The Opioid Crisis

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- McKesson board failed to oversee compliance with the Controlled Substances Act
- In 2008, McKesson paid millions to settle claims that its failure to report suspicious orders from online pharmacies “fueled the explosive prescription drug problem.”
- Even after paying record fines, McKesson continued to improperly distribute opioids



# Governance Reforms

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- Recovered \$175 million for the company and enacted meaningful reforms:
  - establish “Controlled Substances Monitoring Program”
  - separate the CEO and chairman roles
  - enforce term limits for directors, and
  - overhaul the company’s compliance committee

# FirstEnergy Corporation

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# FirstEnergy's Bribery Scandal

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- Senior executives of FirstEnergy used company funds to pay more than \$60 million in bribes to obtain favorable legislation
- HB6 provided a billion-dollar bailout of FirstEnergy's power plants and removed incentives to build renewable energy projects
- The U.S. Attorney in Ohio filed a criminal complaint against Ohio Speaker and FirstEnergy lobbyists

# Governance Reforms

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- \$180 million cash recovery – the second largest derivative recovery in federal court in history – and significant corporate governance reforms:
  - six long-standing board members would not stand for re-election
  - enhanced disclosure to shareholders of political and lobbying activities, and
  - compensation claw backs



# Questions?

# Hannah Ross

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**Hannah Ross** is a member of the firm's Executive Committee and has over two decades of experience as a civil and criminal litigator. A former prosecutor, Hannah has been a key member and leader of trial teams that have recovered billions of dollars for the firm's investor clients.

Hannah is widely recognized by industry observers for her professional achievements and in 2019 was selected among an elite group of top plaintiffs' attorneys as a "Titan of the Plaintiffs Bar" by *Law360* and as a "Plaintiffs' Lawyer Trailblazer" by *The National Law Journal*. Named one of "500 Leading Lawyers in America" by leading legal journal *Lawdragon*, she has also been repeatedly named one of the "Top 250 Women in Litigation" in the nation by *Benchmark Litigation*, and has earned praise from *The Legal 500* as one of a handful of notable practitioners in the country.

During her more than 20 years at BLB&G, Hannah has led trial teams that have recovered more than \$6 billion for investors. Most notably, she led the BLB&G team that recovered nearly \$2 billion for 35 institutions that invested in the Allianz Structured Alpha Funds and was one of the partners who led the trial team that prosecuted *In re Bank of America Securities Litigation*, achieving a landmark settlement of \$2.425 billion shortly before trial, and *Ohio Public Employees Retirement System v. Freddie Mac*, which resulted in a recovery of \$410 million.

Hannah is one of the partners who oversee the firm's Global Securities and Litigation Monitoring Team, which monitors global equities traded in non-U.S. jurisdictions to identify prospective and pending international securities matters. She also serves as Chair of the firm's Diversity Committee and as Co-Chair of the firm's Forum for Institutional Investors and Women's Forum. Hannah serves on the Corporate Leadership Committee of the New York Women's Foundation and just completed a three-year term on the Council of Institutional Investors' Market Advisory Council.



# Thank you.