

Presented by Hannah Ross  
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# THE JOY OF SECURITIES LITIGATION:

A STEP-BY-STEP GUIDE TO  
SECURITIES FRAUD  
LITIGATION



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# CASE STUDY: RAYONIER SECURITIES LITIGATION

## *Goals:*

- Understand the process of investigating and analyzing fraud related losses
- Evaluate potential cases
- Determine whether your Fund should serve as a lead plaintiff

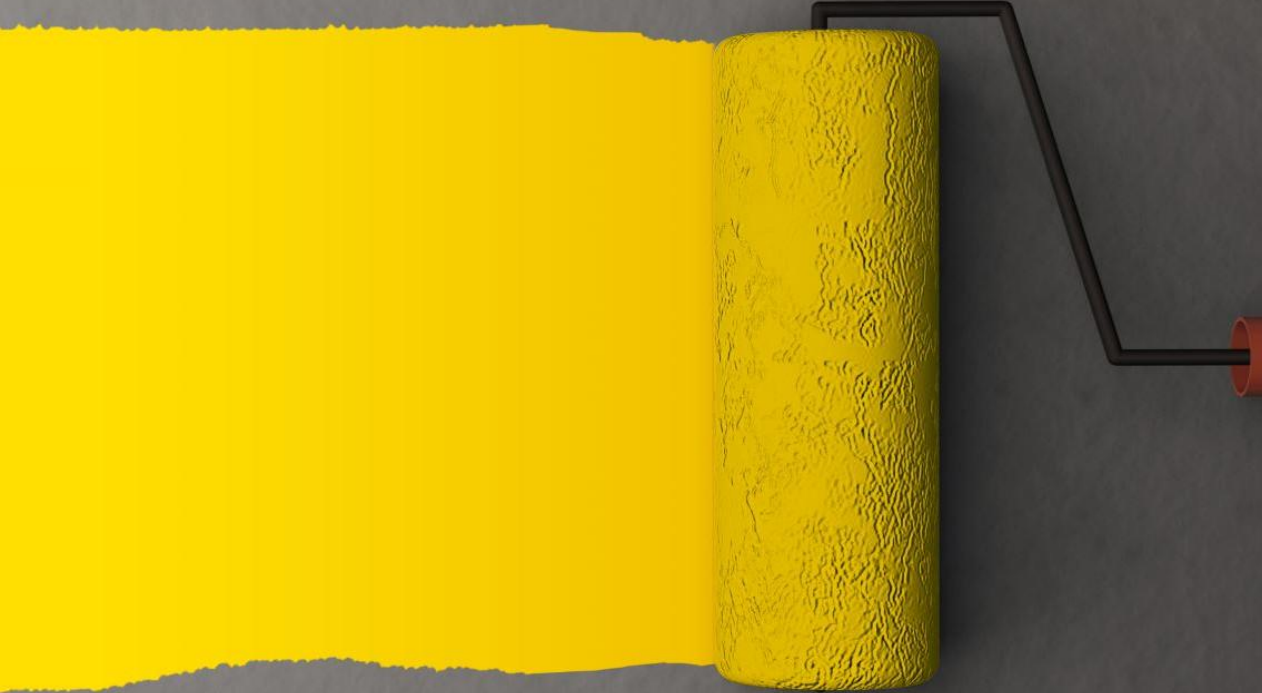


- Understand the different stages of litigation
- Know your duties as a class representative
- Decide if a settlement is fair
- Ensure that the Fund gets its share of the settlement proceeds

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# STEP ONE: A BLANK CANVAS

- Financial analysts employ tools such as Bloomberg financial terminals and monitoring databases which provide real-time data and client loss information
  - Data access is provided through funds' custodian banks, which enables constant monitoring of stock portfolios
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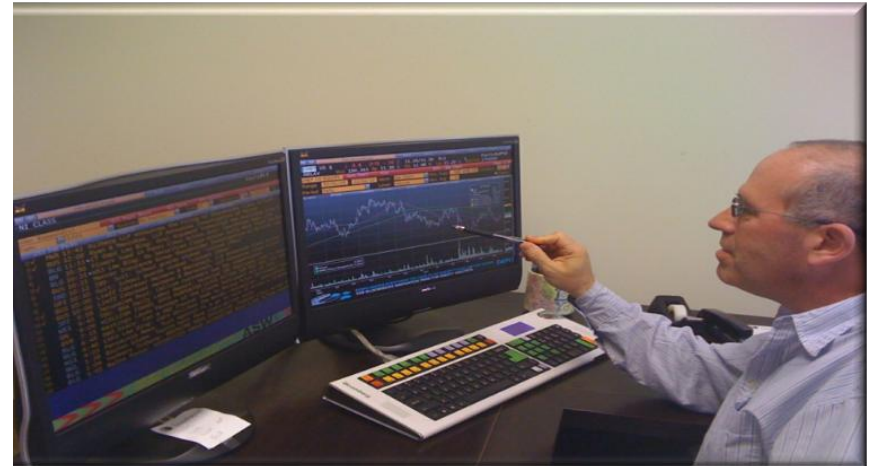


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## A STOCK IN OUR CLIENTS' PORTFOLIO – RAYONIER CORPORATION – ANNOUNCES SURPRISING BAD NEWS

- On November 10, 2014, the price of the Company's stock declined from \$33.90 per share to \$28.82 per share, a decline of almost 15%
- We begin researching the news, the Company, and reviewing Rayonier's public statements to investors

And now we mix our paints . . .





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# NOW WE ADD A BIT OF COLOR . . .

## *Rayonier Securities Litigation* (Middle District of Florida) Case Study:

Rayonier is now a real estate investment trust (“REIT”). A REIT is a company that owns and operates income-producing real estate or real estate-related assets. Throughout the Class Period, Rayonier common stock traded on the New York Stock Exchange, where its stock was publicly traded under the symbol “RYN.” During the Class Period, Rayonier had three core businesses: (i) Forest Resources; (ii) Real Estate; and (iii) Performance Fibers. Rayonier’s Forest Resources business was the largest of the three, accounting for more of the Company’s assets than the other two businesses combined. On January 27, 2014, Rayonier announced that it would spin off its Performance Fibers business into a new company, RYAM. The spin-off of RYAM was completed on June 27, 2014.

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# RAYONIER: A GREAT AMERICAN SUCCESS STORY

**1926**



**EDWARD M. MILLS, President  
Rayonier Incorporated.**

**Rainier Pulp & Paper Company** is founded in Shelton, Washington, in 1926. President Edward “Ted” Mills, a self-educated immigrant from Wales, sees an opportunity to use Washington’s plentiful Western hemlock trees to produce a high-grade bleached paper pulp used for books and writing paper.

Our first pulp and paper mill, built in Shelton, uses the “leftover” wood scraps from the Simpson Logging Company’s sizeable sawmill. Rainier makes headlines by creating a high-value product out of what was once burned as waste.



**1931**

The paper industry stalls during the Great Depression, but Rainier research scientists have found a new outlet for pulp. They team up with DuPont, the leading producer of rayon, to perfect the **world's first high purity cellulose pulp made from western hemlock**. Designed especially for the fast-growing rayon and cellophane industries, it will give companies that produce rayon an alternative to using cotton for fiber, which is rising in cost.

We call the pulp "**Rayonier,**" a name created from the **words rayon and Mount Rainier**, which is visible from our Shelton mill and research center. Soon after, we rename ourselves Rayonier.

1942



Under the control of the War Production Board during World War II, Rayonier's Fernandina Beach mill plays a major role in U.S. efforts through the production of nitrocellulose, used for explosives, bullets and rocket propellants. Rayonier's research team has spent the previous decade perfecting the technology to manufacture the special pulp, but until the war it has never been done on a large scale.

Rayonier halts the majority of its paper pulp production to make the special nitrating cellulose. In 1943 alone, we produce more than 100,000 tons. We invite in our competitors to teach them how to produce it, too. After the war, we receive a 48-star flag from the federal government for our wartime contributions.

## RAYONIER MARKETS ITSELF TO INVESTORS AS A "GREEN" COMPANY

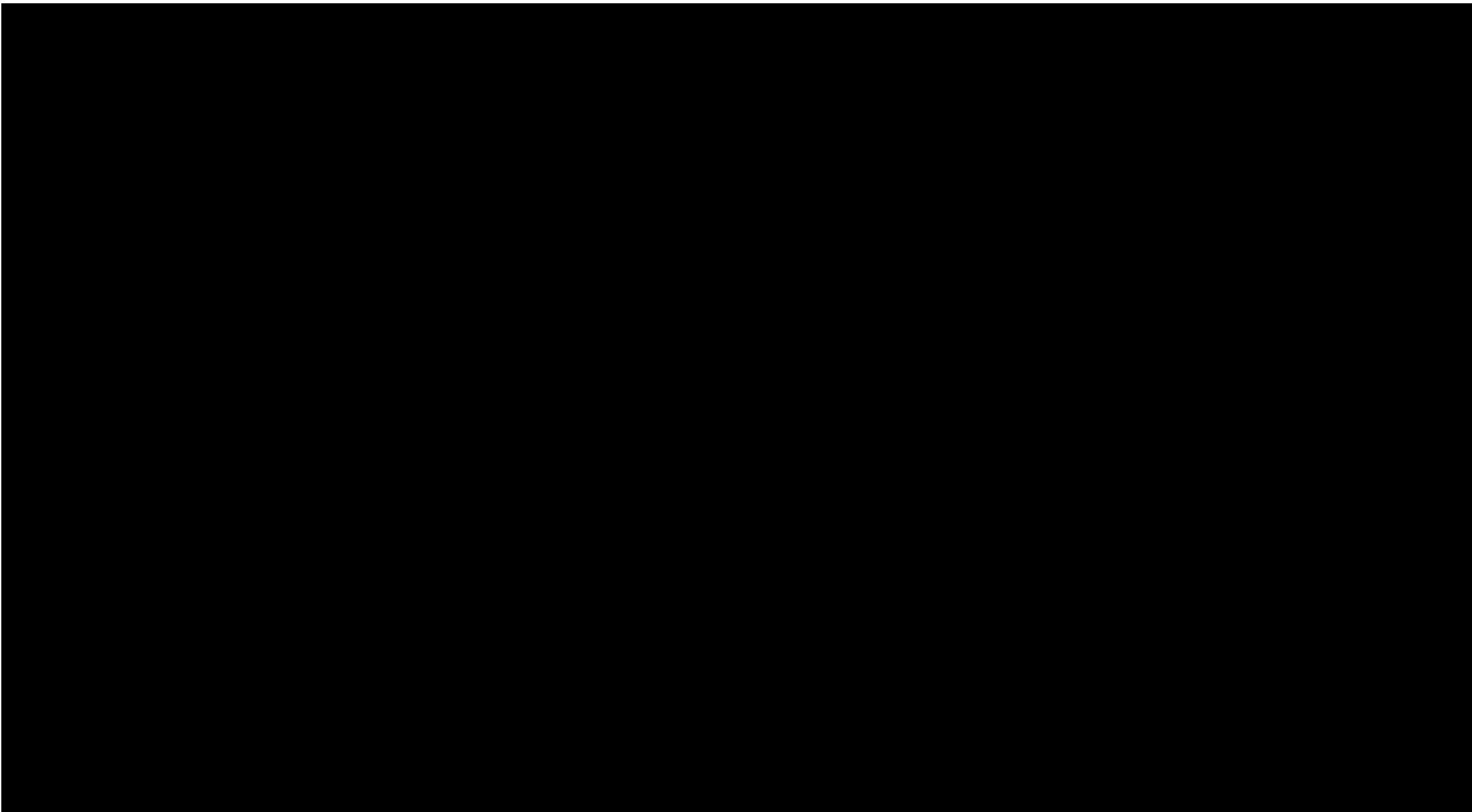
- Rayonier management was big on sustainability. Defendants assured investors that the Company harvested its Pacific Northwest timber at “sustainable harvest levels,” specifying a purported “sustainable rate” below which the Company was harvesting and claiming that “sustainable forestry [is] the past, present and future of Rayonier.”
- *As a forestry company with a nearly 100-year history, “sustainability” isn’t just a buzzword at Rayonier—it’s truly ingrained in everything we do.*



# INVESTORS BUY SHARES OF THE COMPANY BASED ON RAYONIER'S LIES

Investors purchase shares of Rayonier stock based on its strong track record of dividends, strong and sustained growth, and its emphasis on sustainability and responsible harvesting.





# THE TRUTH IS REVEALED

- On November 10, 2014, the Company's new management disclosed the results of an internal review, admitting that Rayonier had overharvested its Pacific Northwest timber for over a decade, and by an average of over 44% each year above the sustainable level. The Company further admitted that, as a result of its overharvesting, it must substantially reduce its harvests over the next decade, forcing Rayonier to slash its dividend payment to investors to about half of what it had been just months earlier.
- Rayonier further disclosed for the first time that, as a result of its overharvesting, the Company's total timber inventory in the Pacific Northwest had actually declined each year since 2008, with a precipitous drop of approximately 17% between 2012 and 2013. The Company also disclosed the ages and volumes of its Pacific Northwest timberlands, which was information internally known at Rayonier for years but never disclosed to investors. The newly disclosed data revealed that over one-third of the Company's timber acreage was comprised of trees less than ten years old – decades away from being of merchantable age – as a result of the Company's overharvesting.

# RAYONIER'S TRACK RECORD OF PROFITABILITY COMES TO A SUDDEN HALT

In response to the Company's disclosures, on November 10, 2014, Rayonier's share price fell \$5.08, or nearly 15%, to close at \$28.82, on unusually high volume of over 6.7 million shares. The price of the Company's stock continued to descend on November 11, 2014, as a result of the news, falling another 7.3% to close at \$26.73, again on unusually high volume of 5.6 million shares. Over the course of the two trading days, Rayonier's stock price *declined by over 21%, wiping out approximately \$909 million in market capitalization.*



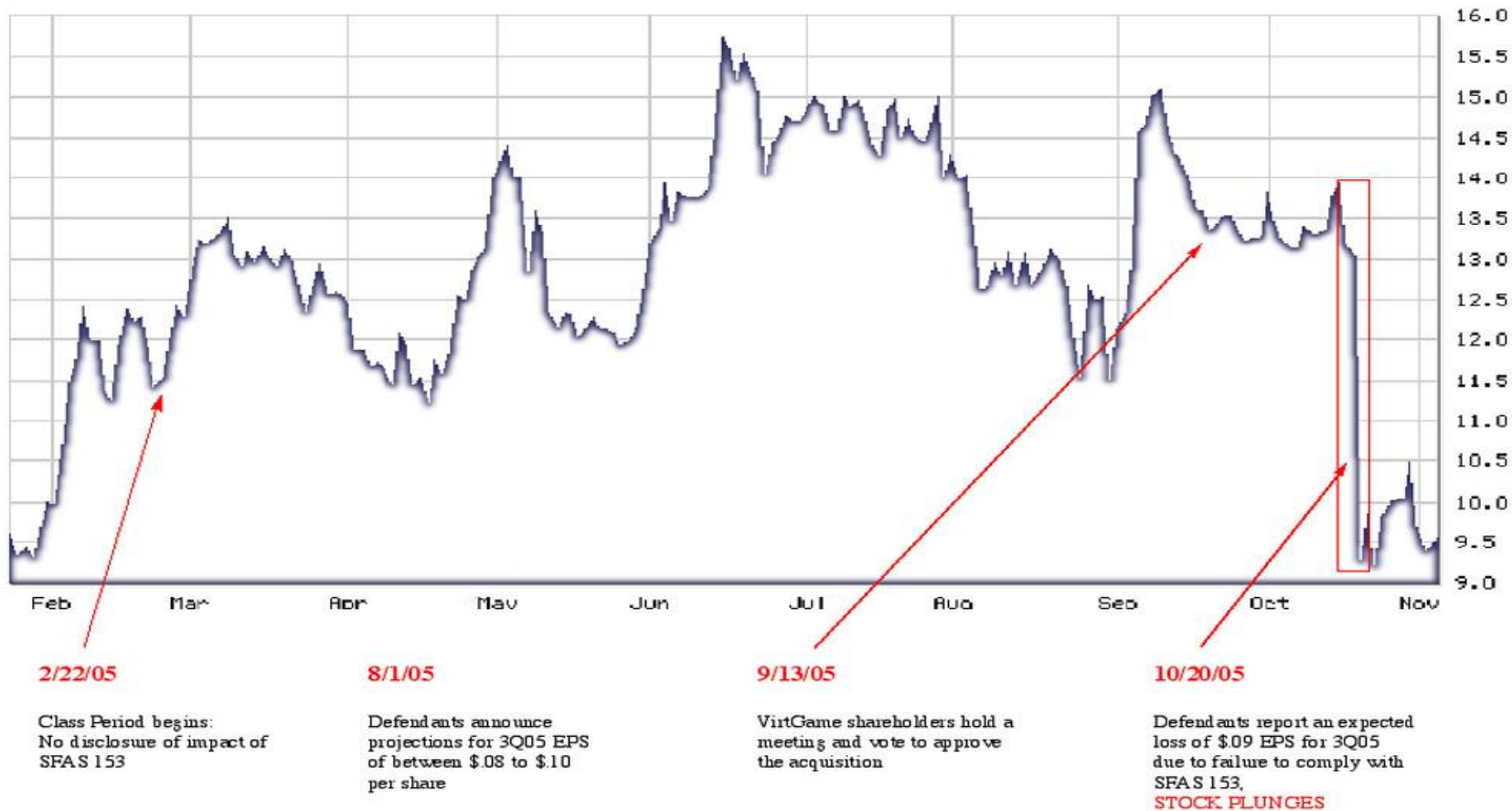
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# AND NOW WE INVESTIGATE

- Understand the Company and its corporate culture
  - Have any clients been impacted?
  - Why did the stock price drop? (Review analyst reports, SEC filings)
  - Will it pass the “heightened pleading standards” ?
  - Where will the case be filed?
  - Who will be named as defendants? Are they collectible?
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# A TYPICAL STOCK PRICE DROP DUE TO FRAUD



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# FACTORS CONTRIBUTING TO A FINDING OF FRAUD



- Analysts responded harshly to Rayonier’s November 2014 revelations. For example, in a report titled “What They Said in 2011, What They are Saying in 2014,” analysts at BMO Capital Markets highlighted Defendant Wilson’s representations in September 2011 concerning Rayonier’s purportedly sustainable harvesting in the Pacific Northwest, observing that those statements were “hard to reconcile” with the Company’s disclosures and “fly in the face” of new management’s revelations of the truth.
  - In the aftermath, the Company’s new CEO, David Nunes explained, Rayonier’s overharvesting during the Class Period amounted to “borrowing from . . . future years’ harvest in the current periods” and was “something that we believe would have indeed come to light before too long,” as the harvest level “bear[s] a lot of weight onto the underlying asset value.”
  - In addition to analysts questioning defendants' credibility and the large stock price drop, the Company reveals that the SEC is investigating Rayonier in connection with these disclosures.
  - The Company’s own admission reflect fraud – the new CEO, David Nunes, explained that “*managing for sustainability [] might sound obvious for a timber company but it’s something that wasn’t being done.*”
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# THE CASE BEGINS

- On November 13, 2014, the “Initial Complaint” is filed in the Middle District of Florida, Jacksonville Division
- Sets forth allegations, but not with as much detail as later complaint

# “NOTICE” IS ISSUED

- Press release is issued which tells investors of their rights and opportunity to serve as “lead plaintiff”
- If you purchased ABC shares during the Class Period and wish to apply to be the lead plaintiff in this action, a motion on your behalf must be filed with the Court no later than May 14, 2011. You may contact XYZ firm to discuss your rights regarding the appointment of lead plaintiff and your interest in the class action

# Press Release

WS +++ Information +++ News +++ Information +++ News +++ Information +++ News +++

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# THE CLOCK BEGINS TICKING . . .

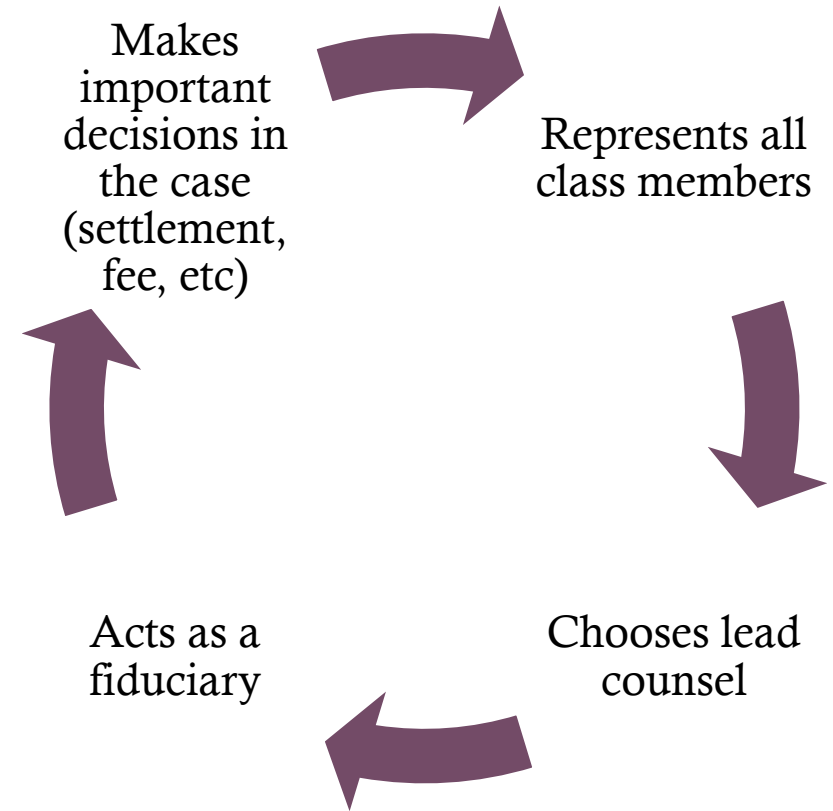
Board has 60 days  
to decide.

No exceptions!

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# THE LEAD PLAINTIFF



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# LEAD PLAINTIFF CONSIDERATIONS

Should my Fund serve as lead plaintiff?

What are our losses?

What other funds might get involved?

Is there real wrongdoing?

What is the Judge's background?

Are there any weaknesses/drawbacks to the case?

What resources will we need to dedicate?

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## NEXT STEPS

- The Court appoints Lake Worth Firefighters' Pension Trust Fund and Pension Trust Fund for Operating Engineers as Lead Plaintiffs on February 25, 2015
- The investigation continues and "CWs" are identified
- Review of SEC filings, press releases, media

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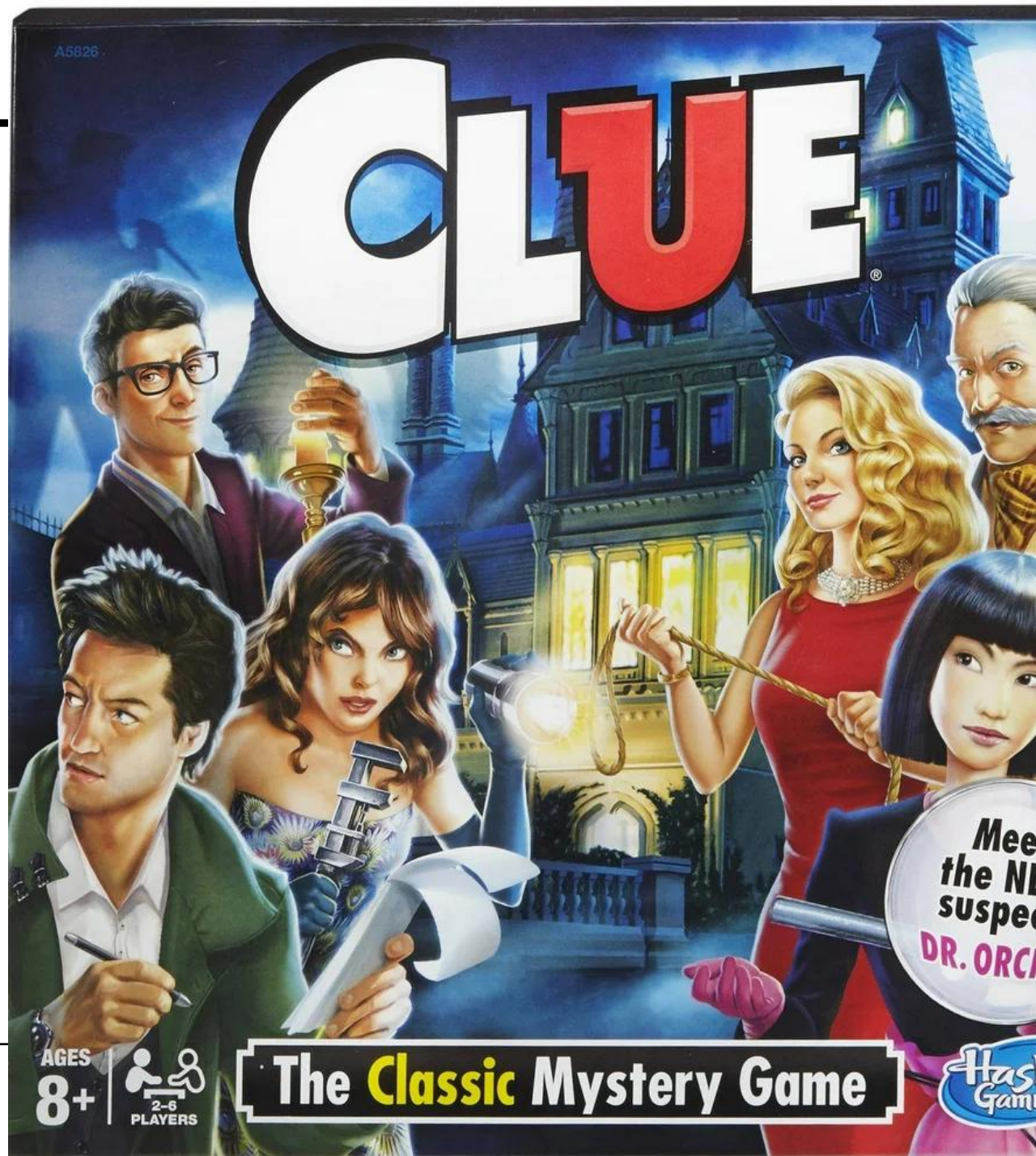
**PLEADING  
YOUR CASE:  
THE OPERATIVE  
CONSOLIDATED  
COMPLAINT**

- Claims alleging fraud under Section 10(b) of the Securities Exchange Act of 1934 must satisfy a heightened and exacting pleading standard
  - The Complaint *must*:
  - Specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation ... is made on information and belief ... state with *particularity* all facts on which that belief is formed.”
  - State with *particularity* facts giving rise to a strong inference that the defendant acted with the required state of intent.
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WHO DID IT?  
WHY?  
WHEN?  
WHERE?

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A black and white photograph of a person from behind, wearing a dark trench coat and a hat, walking away into a dark, smoky or misty environment. The person is centered in the frame. A white rectangular box with a black border is overlaid on the lower-left side of the image, containing the text "THE 'CW' ...".

THE "CW" ...

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# DETAILING THE ROLE AND KNOWLEDGE OF THE CW

- A Complaint should plead information sufficient enough to explain the confidential witnesses' role, the dates they learned of the relevant information, how they had access to this information, and whether their knowledge was first or second hand.
- Each source must be described with particularity in order to pass muster.



A background image of dense green foliage, likely trees or bushes, with a white horizontal line at the top. The text is overlaid on a white rectangular box.

# THE INVESTIGATION REVEALS DETAILS OF DEFENDANTS' FRAUD

- Accounts of several CWs confirm the Company's own admissions and show that, contrary to Defendants' representations during the Class Period, the Company knowingly overharvested in the Pacific Northwest region at the direction of the Individual Defendants.
- Rayonier's overharvesting was reflected in various internal documents, including the annual Long Range Plan, a critical internal Company document prepared, revised, and approved annually by the Individual Defendants.
- Rayonier's timber business was in a "death spiral" due to years of undisclosed overharvesting.
- Rayonier was not planting a tree for every tree harvested, rather, it would take decades to replant sufficiently to reach "sustainable" levels.
- The details are used in the Amended Complaint, and Defendants file "motions to dismiss".

A man in a suit and tie is shown in profile, talking on a mobile phone. He has a comically long, thin nose. The image is overlaid with a semi-transparent dark blue filter. A white rectangular box is centered over the man's face, containing the text "THE RECANTING WITNESS".

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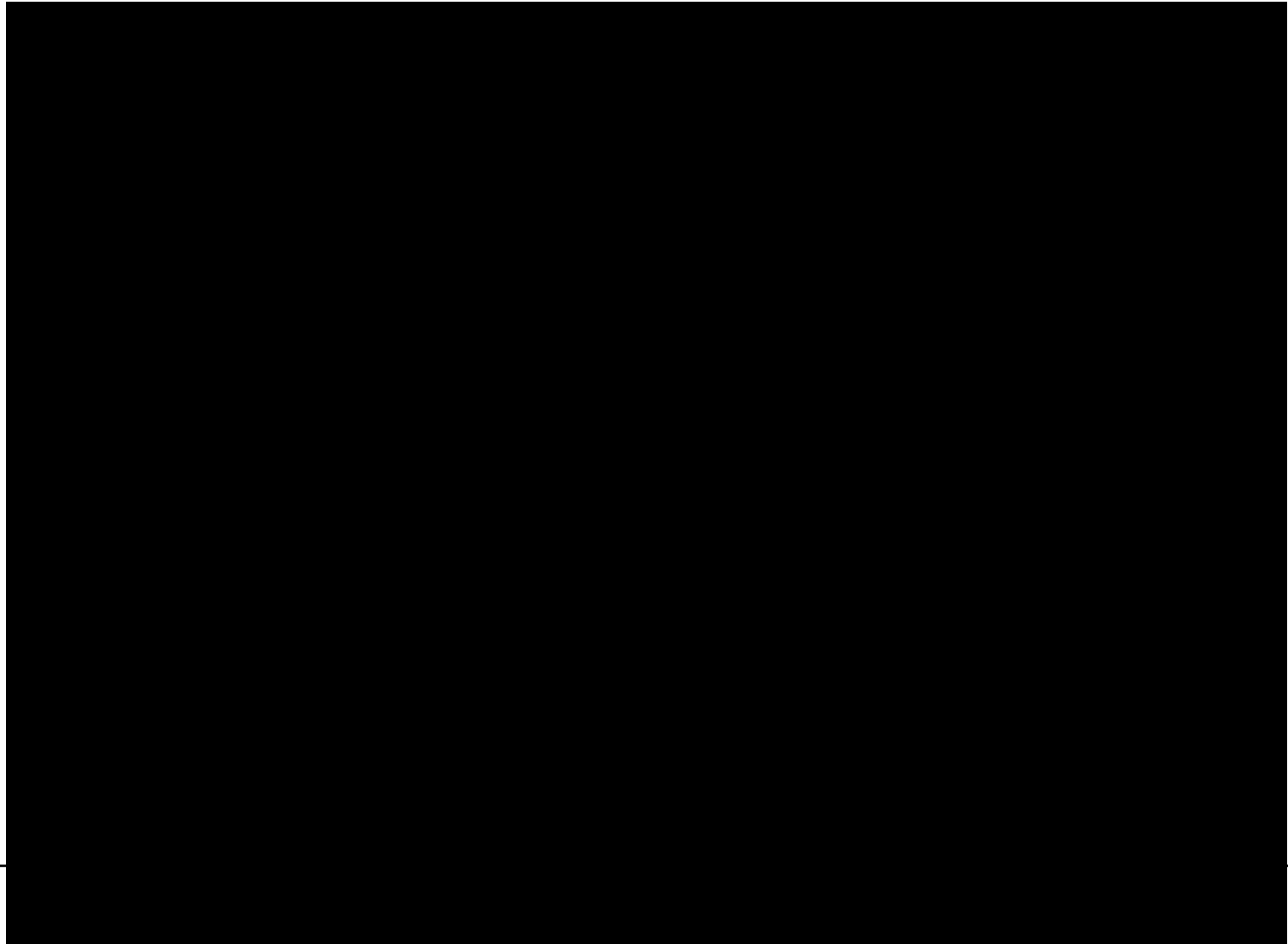
# THE RECANTING WITNESS

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- Rayonier witness “recanted” valuable information used in the Amended Complaint resulting from industry pressure/Company heavy handed tactics.
  - Responses were documented by counsel/investigators which confirmed that the CW had in fact provided the information to us and that agreed to the inclusion of the information in the case.
  - Significant corroborating information.
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WE CALL IT THE "LORAX" CASE





**Bolstered by the  
CW allegations  
and research, the  
Amended  
Complaint is filed**

**After the Amended  
Complaint is filed,  
Defendants have  
the opportunity to  
“move to dismiss”  
all claims**

The Court holds two rounds of oral arguments on the motions to dismiss

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# THE COURT'S OPINION

- May 2016: "Even taking into account the heightened pleading standards under the Private Securities Litigation Reform Act and Eleventh Circuit precedent, the Court finds that Lead Plaintiffs have met those pleading standards and will therefore deny Defendants' motions to dismiss."
  - Once a motion to dismiss is denied, parties can begin discovery, it is stayed prior to this time.
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# DISCOVERY

Following the Court's Order denying the motions to dismiss the Complaint, the Parties commenced discovery. They subsequently propounded discovery, including document requests and deposition notices. Discovery was conducted during a period of approximately ten months. In total, Defendants produced over 1.56 million pages. Lead Plaintiffs began their production on September 6, 2016. In total, Lead Plaintiffs produced over 70,000 pages. The Parties also obtained over 21,000 pages of documents from 18 third parties.





# CLASS CERTIFICATION

Rule 23 of Federal Rules:

Plaintiff must be an "adequate" class representative

Claims are the same as those of other class members (typical)

A Fund must have "independent control over attorneys" so that the litigation is not lawyer-driven

Know significant aspects of case

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# THE RAYONIER SETTLEMENT



- After a two-day mediation with a former federal Judge and subsequent negotiations, a settlement was achieved.
- The case resolved favorably, despite the fact that the SEC walked away from its investigation and did not pursue any legal action
- Lead Plaintiffs reached a settlement for \$73 million in cash that resolves all claims in the action.
- On September 19, 2017, the Court held a hearing to consider final approval of the Settlement and related matters. On October 5, 2017, the Court entered a Final Judgment approving the Settlement as fair, reasonable and adequate, and entered an order approving the Plan of Allocation for the proceeds of the Settlement



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# SETTLEMENT ISSUES

Are there  
collectability  
issues?

Is there sufficient  
insurance?

How does the  
recovery compare  
to the estimated  
damages?

What are the risks  
of proceeding?

What will the  
Fund recover?

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# THE FUNDS ARE DISTRIBUTED

| <b>Initial Distribution</b>                                                                            | <b>Amount</b>       |
|--------------------------------------------------------------------------------------------------------|---------------------|
| Checks and Wires Sent to Eligible Claimants on March 1, 2019                                           | \$50,838,014.93     |
| Cashed Payments as of October 15, 2020                                                                 | (\$50,590,139.35)   |
| Returned Initial Distribution Payments and Tax Reserve Return                                          | \$443,175.29        |
| Epiq Additional Fees and Expenses for Initial Distribution and Estimated Costs for Second Distribution | (\$34,502.94)       |
| <b>Balance of Net Settlement Fund after Initial Distribution as of October 15, 2020</b>                | <b>\$656,547.93</b> |

| <b>Second Distribution</b>                                                         |                     |
|------------------------------------------------------------------------------------|---------------------|
| Checks and Wires Sent to Eligible Claimants on October 16, 2020                    | \$656,547.93        |
| Cashed Checks and Wires as of May 3, 2021                                          | (\$519,095.46)      |
| Returned Second Distribution Payments and Excess Fees & Expenses Estimate          | \$1,590.37          |
| Epiq Additional Fees and Expenses for Second Distribution                          | (\$10,790.17)       |
| <b>Balance of Net Settlement Fund after Second Distribution as of June 3, 2021</b> | <b>\$128,252.67</b> |

| <b>Third Distribution</b>                                                             |                   |
|---------------------------------------------------------------------------------------|-------------------|
| Checks and Wires Sent to Eligible Claimants on June 4, 2021                           | \$128,252.67      |
| Cashed Checks and Wires as of October 21, 2021                                        | (\$126,699.64)    |
| Returned Third Distribution Payments and Tax Return                                   | \$7,652.53        |
| <b>Balance of Net Settlement Fund after Third Distribution as of October 21, 2021</b> | <b>\$9,205.56</b> |

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# GETTING PAID

- Lead Plaintiff Award - in addition to the "pro rata" share of the settlement, lead plaintiffs can ask the Court to allow reimbursement for the time they spent representing the class. This award seeks to compensate them for the hours they spent overseeing the action, reviewing pleadings and briefs, collecting documents, and supervising Lead Counsel.
  - Expenses/costs and fees for plaintiffs counsel are contingent and only collected if a settlement or victory is achieved, and must be approved by the presiding Court
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THE MASTERPIECE IS COMPLETE, AND YOUR FUND  
RECEIVES ITS SHARE OF THE SETTLEMENT



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# BEST PRACTICES FOR PENSION FUNDS



Have a monitoring plan in place



Designate one representative on the Fund or on staff to oversee litigation



Make sure settlements are filed timely and correctly



Keep documents/communications limited to fund specific email servers not personal



Track any time spent by staff on the matter



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# SIZE DOESN'T ALWAYS MATTER



HD Supply

Rayonier

Aracruz

Bank of America

Novo Nordisk

Wilmington Trust

Florida pension funds have served as lead plaintiff in shareholder actions totaling more than \$1 billion

*The End*