No. 25-977

IN THE

Supreme Court of the United States

JOHNSON & JOHNSON, ET AL.,
Petitioners,
v.
SAN DIEGO COUNTY EMPLOYEES RETIREMENT ASSOCIATION; FRANK HALL, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF *AMICI CURIAE* FOR CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL ASSOCIATION OF MANUFACTURERS, SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION, AND PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation, representing approximately 300,000 direct members and indirectly representing the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.9 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The Securities Industry and Financial Markets

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[1] Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici*, their members, or their counsel, made any monetary contribution intended to fund its preparation or submission. Counsel for all parties were timely notified under Rule 37.2(a) of *amici*'s intent to file this brief.

Association ("SIFMA") is a securities industry trade association representing the interests of hundreds of securities firms, banks, and financial asset managers across the United States. SIFMA's mission is to support a strong financial sector while promoting investor opportunity, capital formation, job creation, economic growth, and the cultivation of public trust and confidence in the financial markets.

Pharmaceutical Research and Manufacturers of America ("PhRMA") is a voluntary, nonprofit association representing the country's leading innovative biopharmaceutical research companies. PhRMA's members develop innovative medicines that transform lives and create a healthier world. PhRMA advocates in support of public policies to ensure patients can access and afford medicines that prevent, treat, and cure disease. PhRMA member companies have invested more than $850 billion in the search for new treatments and cures over the last decade, supporting nearly five million jobs in the United States. PhRMA members produce medicines that are distributed to pharmacies and hospitals throughout the United States.

Amici have a strong interest in this case. If the Third Circuit's decision were to stand, it would expose American businesses to costly securities class-action lawsuits for allegedly defrauding the market, based solely on plaintiffs' lawyers' own republication and advertisement of already-disclosed information that they claim impacted the businesses' stock price. That result would be inconsistent with basic securities-law principles established by decades of this Court's precedent.

SUMMARY OF ARGUMENT

Securities class-action plaintiffs increasingly allege that companies have committed fraud on the market by making misrepresentations designed not to increase their stock's price, but simply to keep it from falling. Such "inflation-maintenance" theories pose particular difficulties for measuring the "price impact" of the alleged misrepresentations, because plaintiffs must show how much the stock price *would have* fallen but for the misrepresentation. *Goldman Sachs Grp., Inc. v. Ark. Tchr. Ret. Sys.*, 594 U.S. 113, 123 (2021).[2] Without showing that price impact, plaintiffs cannot take advantage of the "rebuttable presumption" established in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), that investors relied on the misrepresentation to their detriment when trading the company's stock. *Goldman*, 594 U.S. at 123. Hence, plaintiffs must attempt to show that a later disclosure corrected the misrepresentation and then claim "the back-end price drop" from the disclosure "equals front-end inflation" from the misrepresentation. *Id.* If "there is a mismatch between the contents of the misrepresentation and the corrective disclosure," or if the supposed disclosure otherwise does not actually *correct* anything not already known, then that "inference … starts to break down." *Id.*

This Court held in *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014), and reaffirmed in *Goldman*, 594 U.S. at 119, that defendants must "be allowed to defeat the [*Basic*] presumption at the class

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[2] Unless otherwise stated, in case quotations, all emphases are added and all internal quotation marks are omitted.

certification stage through evidence that the misrepresentation did not in fact affect the stock price," *Halliburton*, 573 U.S. at 279. The Third Circuit in this case made a series of errors that deprived Johnson & Johnson ("J&J")—and threatens to deprive other defendants—of that right. It did this by allowing Plaintiffs to prove price impact and certify a class based on various "disclosures" that merely amplified already-disclosed information and could not have "corrected" any misrepresentation.

The Third Circuit's reasoning is a recipe for unwarranted class certifications in contravention of this Court's established precedent. It even allows plaintiffs' lawyers to manufacture their own "corrective" disclosures by filing lawsuits, drafting press releases, and feeding public information to journalists for regurgitation. And because this is one of only three appellate panels in the country to have applied this Court's recent decision in *Goldman*, the Third Circuit's errors (and those of a similar decision recently issued by the Ninth Circuit) will have an outsized effect on how other courts analyze price impact in securities cases. As inflation-maintenance cases become increasingly popular, the Third Circuit's misguided reasoning threatens to saddle many businesses with baseless but costly class-action lawsuits.

This case meets every rationale for certiorari review. It conflicts with *Halliburton* and *Goldman*, *see* S. Ct. R. 10(a), and with decisions from other courts of appeals, *see* S. Ct. R. 10(c). The questions the petition raises are also of exceptional importance to a wide swath of securities cases. *See* S. Ct. R. 10(c). And absent this Court's review, the decision below

will have substantial adverse consequences for the entire business community.

The Court should grant certiorari and reverse.

ARGUMENT

I. THE THIRD CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S PRECEDENT AND OTHER CIRCUITS' DECISIONS AND IS PLAINLY WRONG

As the Petition explains in greater detail, the Third Circuit made two related legal errors that defy this Court's precedent, conflict with other circuit decisions, and undermine evidentiary standards intended to prevent meritless class certification. Over a dissent, the Third Circuit panel held both that a disclosure is sufficiently corrective if it merely concerns the same general subject as the alleged misrepresentation—without requiring that the disclosure actually *correct* the misrepresentation—and that the disclosure need not contain any new information. Pet. App. 9a-13a. Put together, these errors deprive defendants of any meaningful opportunity to disprove the price-impact prerequisite to *Basic*'s reliance presumption—an opportunity that *Halliburton* and *Goldman* guarantee.

A. The Third Circuit's Correctiveness and Newness Holdings Contradict *Halliburton* and *Goldman* and Exacerbate Circuit Splits.

The Third Circuit's decision enables class-action plaintiffs to prove price impact from supposedly "corrective" disclosures that (1) do not actually correct a

prior misrepresentation and (2) do not even provide any new facts. *See* Pet. App. 10a-12a & n.11. Both of these moves flout this Court's precedent and conflict with other circuits' rulings that faithfully follow *Halliburton* and *Goldman*.

1. First, the Third Circuit refused to require that a proposed corrective disclosure actually correct a prior factual misrepresentation. Instead, the court found it sufficient that "there is no mismatch between the *subject* of the alleged misrepresentation and the content of the disclosures." Pet. App. 10a. The district court "made no correctiveness findings" at all, Pet. App. 25a, and the Third Circuit majority did not attempt to make up for that deficit. It did not seek to match up any fact in any alleged corrective disclosure with any alleged misrepresentation to show that the former corrected the latter. *See* Pet. App. 10a.

The Ninth Circuit recently followed in the Third Circuit's footsteps, allowing a class to be certified in an inflation-maintenance case simply because both the alleged misrepresentations and the alleged corrective disclosures dealt with "Zillow's home-pricing struggles," which the Ninth Circuit felt meant "Zillow's front-end and back-end statements are *matched enough* under *Goldman*." *Jaeger v. Zillow Grp., Inc.*, 2025 WL 2741642, at *2 (9th Cir. Sept. 26, 2025).[3]

[3] In *Jaeger*, the alleged misrepresentations consisted of broad suggestions "that Zillow, while struggling to get its pricing model right, had made 'progress ... in strengthening [its] pricing models,'" while the supposed corrective disclosure was Zillow's

These decisions flatly contradict this Court's opinion in *Goldman*. There, the Court held that the key "inference" for inflation-maintenance cases—"that the back-end price drop equals front-end inflation—starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure." *Goldman*, 594 U.S. at 123. For instance, there may be such a mismatch "when the earlier misrepresentation is generic (*e.g.*, 'we have faith in our business model') and the later corrective disclosure is specific (*e.g.*, 'our fourth quarter earnings did not meet expectations')." *Id.* This is so even though one could say that such a misrepresentation and disclosure concern the same "subject"—there, the company's financial health. Pet. App. 10a. More specific misrepresentations likewise may not match later disclosures if the latter do not actually involve the same "content" as the former, so that "it is less likely that the specific disclosure actually corrected the [earlier] misrepresentation." *Goldman*, 594 U.S. at 123.

By accepting broad subject-level matches as sufficient to prove correctiveness, the Third and Ninth Circuits also split with the Second Circuit. Following this Court's direction, the Second Circuit has held that a corrective disclosure must actually correct an alleged misrepresentation. *See Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74, 80-81 (2d Cir. 2023). "[R]equiring only a general front-end—back-end subject matter match to, effectively, concoct a

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later decision to "close[] the entire home-buying side of its business because it had been 'unable to accurately forecast future home prices.'" 2025 WL 2741642, at *2.

highly specific truthful substitute does not meaningfully account for the Supreme Court's guidance in *Goldman*." *Id.* at 100-01. The Third Circuit allows for just the sort of concocted matches that the Second Circuit rightly prohibits.[4]

2. The Third Circuit also refused to require that corrective disclosures actually provide new information. To the contrary, it held that it "need not decide whether . . . a disclosure must be new . . . , because . . . disclosures based on public information may nevertheless communicate a new signal to the market in certain situations." Pet. App. 8a.

This holding ignores the efficient markets hypothesis that underpins the *Basic* presumption in the first place. "The *Basic* presumption is premised on the theory that investors rely on the market price of a company's security"—and that "in an efficient market" the price "*incorporates all of the company's public misrepresentations*." *Goldman*, 594 U.S. at 117; *see Basic*, 485 U.S. at 246. Securities plaintiffs "cannot contend that the market is efficient for purposes of [proving] reliance and then cast the theory aside" to claim that disclosures consisting of or commenting on already-public—and thus, by hypothesis, already priced-in—information are in fact providing new information that the market will not have incorporated.

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[4] Underscoring its mistaken analysis, the Third Circuit cited in support of its standard a pre-*Halliburton*, pre-*Goldman* Second Circuit case that did not address matching (and in any event plainly supports J&J's position on newness). *See* Pet. App. 10a n.10. In so doing, the Third Circuit overlooked the Second Circuit's post-*Goldman* precedent that represents the Second Circuit's current rule on correctiveness. *See* Pet. 17-18.

Meyer v. Greene, 710 F.3d 1189, 1198-99 (11th Cir. 2013).

The Third Circuit's newness holding also exacerbates a circuit conflict. As with its correctiveness holding, the Third Circuit is joined by the Ninth Circuit in allowing for stale information to satisfy the newness requirement. *See Jaeger*, 2025 WL 2741642, at *2; *In re Genius Brands Int'l, Inc. Sec. Litig.*, 97 F.4th 1171, 1186 (9th Cir. 2024). Several other circuits, in contrast, rightly have rejected the idea that sources like journalistic reports or press releases characterizing previously disclosed information can constitute corrective disclosures in an efficient market. *See, e.g.*, *Emps.' Ret. Sys. v. Whole Foods Mkt., Inc.*, 905 F.3d 892, 904 (5th Cir. 2018); *Rand-Heart of N.Y., Inc. v. Dolan*, 812 F.3d 1172, 1180 (8th Cir. 2016); *Meyer*, 710 F.3d at 1199; *Katyle v. Penn Nat'l Gaming, Inc.*, 637 F.3d 462, 473 (4th Cir. 2011); *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501, 512 (2d Cir. 2010).

B. The Third Circuit's Standard Allowed Plaintiffs to Certify a Class Without the Required Showing of Price Impact.

The Third Circuit's decision is particularly dangerous for securities defendants because it allows plaintiffs not merely to state a claim but to certify a class without meeting this Court's standards for proving price impact. The fact that a misrepresentation has a price impact is "*Basic*'s fundamental premise," and price impact "thus has everything to do with the issue of predominance at the class certification stage." *Halliburton*, 573 U.S. at 283. This Court therefore has admonished that "if reliance is to be shown

through the *Basic* presumption, the publicity and market efficiency prerequisites must be *proved* before class certification." *Id.*

This requirement is an application of this Court's more general class-action standards. "Rule 23 does not set forth a mere pleading standard," allowing the court to make all inferences in the plaintiff's favor and fill in any missing details. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Rather, any party seeking to certify a class "must affirmatively demonstrate his compliance with the Rule." *Id.* This means that plaintiffs must "satisfy *through evidentiary proof* at least one of the provisions of Rule 23(b)"—here, Rule 23(b)(3)'s predominance requirement. *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013); *see Halliburton*, 573 U.S. at 275 (noting that the Court's class-action "decisions have made clear that plaintiffs wishing to proceed through a class action must actually prove—not simply plead—that their proposed class satisfies each requirement of Rule 23, including (if applicable) the predominance requirement of Rule 23(b)(3)") (emphasis omitted).

The Third Circuit's decision below flouted this Court's class-action precedents, including *Halliburton*. It affirmed the district court's class certification based on an erroneous legal standard that relieved the plaintiffs of their burden to show a price impact. The panel majority embraced two theories of causation to allow it to evade the need for such proof. First, it reasoned, "[e]ach disclosure *could have* communicated new, value-relevant information to investors." Pet. App. 10a. And second, each disclosure was "followed by a stock price decline" that the majority

thought must have been because of the disclosures. Pet. App. 12a.[5]

Both rationales are wrong. The first allows plaintiffs to defeat defendants' showing of no price impact based solely on judges' intuitions about what *might* be sufficient to give the market additional signals—not based on the actual evidence put forward. *See* Pet. App. 10a-12a n.11 (speculating about signals each disclosure might have communicated). This sort of rampant speculation is inappropriate at any stage. But it is especially problematic at class certification, where the plaintiffs must "*prove[]*" most of the prerequisites for the *Basic* presumption and defendants have the right to "seek to defeat the *Basic* presumption . . . through direct as well as indirect price impact evidence." *Halliburton*, 573 U.S. at 283.

The Third Circuit's post hoc rationalization also oversteps the appellate court's role. This Court made clear in *Goldman* that it is *the district court's* job to weigh the evidence and determine whether "the alleged misrepresentations had a price impact." 594 U.S. at 126-27. The district court here made none of the findings necessary to conclude that the supposed

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[5] To the extent the Third Circuit relied on the idea that some of the information "disclosed" was already public but was too obscure to truly affect the markets, *see* Pet. App. 10a-12a n.11, that assumption violates the efficient market hypothesis that undergirds *Basic*. *See supra* at 8. But it is also a particularly illogical basis for finding price impact here, when many of the supposed disclosures *themselves* were rather obscure. *See* Pet. App. 3a n.3 (noting that alleged corrective disclosures included, *inter alia*, two press releases on websites of law firms, "a Mesothelioma.net blogpost," and a Law360 article).

disclosures were corrective or new and so could have had any price impact. *See* Pet. App. 23a-24a & n.10. But the Third Circuit found that it could discern a path to the district court's ultimate conclusion. Pet. App. 10a, 10a-12a n.11. So, in place of factual findings from the district court, the Third Circuit majority substituted its own hunches—about what evidence the district court *might* have used to reach its conclusion, and about what new signals the disclosures *might* have sent to the market—even though each disclosure conveyed only already-public information. As the dissent below noted, Pet. App. 27a-28a, this sort of judicial speculation cannot substitute for the evidence the parties present.

As to the second rationale, the panel erroneously treated the fact that the stock price moved *after* a disclosure as proof that the price moved *because* the disclosure corrected a misrepresentation. But "*[p]ost hoc ergo propter hoc* is the name of a logical fallacy, not a reliable means of meeting one's burden of proof." *Aluminum Recovery Techs., Inc. v. ACE Am. Ins. Co.*, 94 F.4th 561, 563 (7th Cir. 2024). Price impact requires *causation*, not mere temporal correlation. *See In re Allstate Corp. Sec. Litig.*, 966 F.3d 595, 612 (7th Cir. 2020). If "the alleged misrepresentation did not, for whatever reason, *actually affect* the market price, . . . then the presumption of reliance would not apply." *Halliburton*, 573 U.S. at 269.

It is easy to see why this causation requirement exists. A defendant may, of course, be able to show that the supposed corrective disclosure had no effect on the stock price because the stock price did not move. *But see* Pet. App. 12a-13a n.12 (holding that

even "the absence of a statistically significant decline after the disclosure is not a barrier to a finding that the press release affected the stock price"). But a defendant also can show that, though the stock's price dropped, it did so for reasons unrelated to the disclosure of new corrective information. A new *event*, such as a trial verdict, may trigger a stock-price drop even if the event is based on already-public information, like evidence of malfeasance, whose initial disclosure had already dispelled a prior misrepresentation. *See* Pet. App. 26a-27a. The stock price may even drop as a result purely of the *amount* of an adverse verdict, which may differ from investors' expectations given previous judgment amounts, *see* Pet. App. 27a, or may significantly affect a company's bottom line. The panel confused such events, which can lower stock prices by creating bad publicity, with the actual revelation of the underlying information, which if released in an efficient market already will have corrected any misrepresentation. *See* Pet. App. 12a-13a n.12.

Likewise, the announcement of new lawsuits against a company, *see* Pet. App. 10a-12a n.11, could well cause a stock drop—if at all— simply because of the known financial cost of defending against a significant class action, rather than because the lawsuits provide any new information that would correct an alleged misrepresentation. Ironically, the Third Circuit's decision significantly increases those defense costs by making class certification—and thus extortionate settlements—far more likely. *See infra* at 20-21. The Third Circuit's reasoning therefore makes it more likely that any stock drop upon the announce-

ment of a new lawsuit would simply be due to anticipated costs to the company, even while the Third Circuit encourages district courts to assume that the drop must come from a signal that the company was engaged in misrepresentations. Pet. App. 10a-12a n.11.

The Third Circuit's erroneous legal standard substitutes mere temporal closeness to the alleged disclosure for evidence of causation. And it allows judges' speculation about what effects a verdict, announcement of lawsuits, or rehashing of already-public information might have on the markets to override the evidence the parties actually present. That such threadbare analysis could stand in for evidence of causation at the class-certification stage simply underscores how far the Third Circuit's rule deviates from what this Court's precedents require.

II. THE STANDARD FOR REBUTTING THE *BASIC* PRESUMPTION IS OF GREAT IMPORTANCE

The core question raised by the petition—what must be proven to defeat a rebuttal of the *Basic* presumption in corrective-disclosure cases—is of exceptional importance. America's business community already is fighting off a wave of inflation-maintenance cases. Left to spread, the lax analysis that the Third Circuit employed here and the Ninth Circuit employed in *Jaeger* could turn the wave into a tsunami, placing immense pressure on businesses of all sorts to settle unmeritorious cases to avoid crushing financial exposure.

A. As shown below, corrective-disclosure theories, and inflation-maintenance theories in particular, have become common in securities class-action lawsuits. The Third Circuit's decision invites highly dubious class actions predicated on stale disclosures. As one academic observer noted, "this opinion is a gift to plaintiffs." Ann Lipton, *The Third Circuit Says Markets are Efficient but Not Too Efficient*, Bus. Law Prof Blog (Aug. 1, 2025), https://perma.cc/L9YX-ASU8. And this "gift" will keep on giving—not just at class certification, "but also [on] motions to dismiss, where arguments similar to J&J's" have, before now, often "succeed[ed] in getting complaints dismissed." *Id.*

Even worse, the panel's reasoning allows plaintiffs and their counsel to manufacture their own "corrective" disclosures and the evidence needed for class certification. Consider the supposed corrective disclosures Plaintiffs put forward here: two press releases from products-liability plaintiffs' law firms teasing new lawsuits or documents; several news articles and a blog post, which relied on already-public information provided by plaintiffs' attorneys and expert witnesses; and a jury verdict in a trial against J&J brought by plaintiffs' attorneys. *See* Pet. App. 3a n.3; C.A.3 Defs.'-Appellants' Opening Panel Br. 14-15, 35-37, 41-42. All these "disclosures" repeated already-available information, and plaintiffs' lawyers were instrumental to all of them. Yet the panel declared that each could constitute a valid corrective disclosure. Pet. App. 10a-12a & n.11.

Under the panel's reasoning, nothing would prevent securities plaintiffs' attorneys from simply creat-

ing their own press releases, filing lawsuits, or feeding stories to journalists, and then turning around and pointing to their own regurgitations of already-public information as "corrective" disclosures. Each of these self-serving acts would, in the Third Circuit's view, "communicate[] something new to the marketplace." *Id.* They may signal, for instance, that the law firm itself viewed its alleged evidence "as sufficiently credible and compelling to merit the filing of additional suits making similar claims," or that information already disclosed in a public trial is somehow being "presented in an intelligible manner for the first time" simply by being placed in an article or in a report "published by a major news organization." *Id.* If courts are allowed to certify classes on this basis, any plaintiff's lawyer could pair a products-liability or other tort suit with a follow-on securities class action based on the lawyer's own actions in the initial suit and strongarm the company into a settlement. The securities laws were enacted for the benefit of defrauded shareholders, not to serve as lawyers' piggybanks.

B. The panel's errors will have impact across the country, far beyond this case or the circuit that decided it. This is only the second appellate decision to have applied *Goldman*, after the Second Circuit's remand opinion in *Goldman* itself. *See* Jessica Corso, *Securities Class Actions Had A Late Summer Appellate Bloom*, Law360 (Sept. 8, 2025), https://perma.cc/BPZ8-BH3Z. The opinion inevitably will have an outsized effect on securities class actions as other courts begin to grapple with *Goldman*.

Indeed, the panel's ruling already figured into the third circuit-level case applying *Goldman*—*Jaeger v. Zillow Group, Inc.*, 2025 WL 2741642. The *Jaeger* plaintiffs quickly filed a Rule 28(j) letter to alert the Ninth Circuit to the Third Circuit panel's decision and then leaned on that decision as support for their position at oral argument. *See* Citation of Supplemental Authorities, *Jaeger*, *supra*, ECF No. 36 (Aug. 5, 2025); Tr. of Oral Arg. 32:52-33:41, *Jaeger*, *supra*, https://www.ca9.uscourts.gov/media/video/?20250814/24-6605/. Although the panel ultimately did not directly cite the Third Circuit's ruling, it did follow the Third Circuit's reasoning. *See supra* at 6-7, 9. The prominence that the *Jaeger* plaintiffs gave to the Third Circuit's decision further illustrates the importance of that decision and the strong likelihood that its consequences will reverberate going forward.

It does not matter that the panel's opinion is unpublished. Though unpublished decisions are not binding authority, "parties remain free to argue" even before the court of appeals "that such opinions set forth persuasive reasoning," *Wallace v. Mahanoy*, 2 F.4th 133, 144 n.16 (3d Cir. 2021), just as the *Jaeger* plaintiffs successfully did. Parties have even better reason to do so in light of the Third Circuit's refusal to review the decision en banc. More crucially, "district courts may rely on non-precedential opinions as strongly persuasive authority," *United States v. Barney*, 792 F. Supp. 2d 725, 729 (D.N.J. 2011), *aff'd*, 672

F.3d 228 (3d Cir. 2012), and often do.[6] As the panel decision is one of only three circuit-level decisions applying *Goldman*, district courts in the Third Circuit and beyond predictably will rely on it. *See, e.g.*, *In re Celgene Corp. Sec. Litig.*, 2020 WL 8870665, at *10 (D.N.J. Nov. 29, 2020) (turning to other circuits' decisions because "[t]he Third Circuit has not addressed if a plaintiff that invokes the *Basic* presumption can rely on a price maintenance theory"). Other securities class-action plaintiffs already are relying on the panel's decision to bolster their own cases.[7] And, of course, this Court routinely grants petitions for certiorari from unpublished decisions.[8]

C. The panel opinion will have significant adverse consequences for *amici*'s members. Plaintiffs in securities cases generally allege that misrepresentations

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[6] *See, e.g.*, *Burg v. Platkin*, 2024 WL 5198776, at *5 (D.N.J. Dec. 23, 2024); *Cuevas-Novas v. Dep't of Homeland Sec*, 2023 WL 5967882, at *2 (M.D. Pa. Aug. 21, 2023); *United States v. Miles*, 2020 WL 4904019, at *2 (W.D. Pa. Aug. 20, 2020).

[7] *See, e.g.*, Plaintiffs' Opposition to Defendants' Motion to Dismiss at 26, *Roofers Loc. No. 149 Pension Fund v. GSK PLC*, No. 2:25-cv-00618-CFK.(E.D. Pa. Nov. 4, 2025), 2025 WL 4191751 (citing Third Circuit's decision); Plaintiffs' Opposition to Defendants' Motion for Summary Judgment at 21, *St. Clair Cnty. Emps.' Ret. Sys. v. Acadia Healthcare Co.*, No. 3:18-cv-00988 (M.D. Tenn. Aug. 11, 2025), 2025 WL 3493041 (same); Plaintiffs' Reply in Further Support of Motion for Class Certification at 5 n.2, 11, *Shash v. Biogen Inc.*, No. No. 1:21-cv-10479-IT (D. Mass. Nov. 5, 2025), 2025 WL 4077288 (same).

[8] *See, e.g.*, *Geo Grp., Inc. v. Menocal*, 146 S. Ct. 774, 780-81 (2026); *Berk v. Choy*, 146 S. Ct. 546, 552 (2026); *Bowe v. United States*, 146 S. Ct. 447, 454 (2026), *vacating and remanding In re Bowe*, 2024 WL 4038107 (11th Cir. June 27, 2024).

artificially inflated stock prices until corrective disclosures burst the inflationary bubble. Of these, a growing number allege the same "inflation-maintenance" theory alleged in *Goldman* and by Plaintiffs here—despite this Court's refusal to bless its validity. *Goldman*, 594 U.S. at 120 n.1; *see, e.g.*, *Allstate*, 966 F.3d at 612 & n.5; *IBEW Loc. 98 Pension Fund v. Best Buy Co.*, 818 F.3d 775, 782-83 (8th Cir. 2016); *In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 257-58 (2d Cir. 2016); *In re Pfizer Inc. Sec. Litig.*, 819 F.3d 642, 659 (2d Cir. 2016); *Ludlow v. BP, P.L.C.*, 800 F.3d 674, 680, 687 (5th Cir. 2015); *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 418-19 (7th Cir. 2015); *FindWhat Inv. Grp. v. FindWhat.com*, 658 F.3d 1282, 1314-15 (11th Cir. 2011); *Schleicher v. Wendt*, 618 F.3d 679, 683-84 (7th Cir. 2010).

In fact, the inflation-maintenance theory has become securities plaintiffs' go-to method of alleging price impact. One study found that, in the four years after *Halliburton*, the inflation-maintenance theory was raised in ***71%*** of district-court cases involving attempts to rebut the *Basic* presumption. *See* Note, *Congress, the Supreme Court, and the Rise of Securities-Fraud Class Actions*, 132 Harv. L. Rev. 1067, 1077 (2019). "District courts within the Third Circuit have also recognized that a plaintiff can proceed on a price maintenance theory," and often adjudicate class-certification motions in such cases. *Celgene Corp.*, 2020 WL 8870665, at *11 (citing cases); *see, e.g.*, *Halman Aldubi Provident & Pension Funds Ltd. v. Teva Pharms. Indus. Ltd.*, 2023 WL 7285167, at *3 (E.D. Pa. Nov. 3, 2023); *Allegheny Cnty. Emps.' Ret. Sys. v. Energy Transfer LP*, 623 F. Supp. 3d 470, 490-

91 (E.D. Pa. 2022). Scholars have noted, and expressed concern about, the increasingly common use of the inflation-maintenance theory to sustain securities class actions. *See, e.g.*, Richard A. Booth, *Price Inflation and Price Maintenance in Securities Fraud Class Actions*, 30 Stan. J.L. Econ. & Bus. 133, 135-36, 171 (2025); Merritt B. Fox & Joshua Mitts, *Event-Driven Suits and the Rethinking of Securities Litigation*, 78 Bus. Law. 1, 67-68 (2023); Emily Strauss, *Is Everything Securities Fraud?*, 12 U.C. Irvine L. Rev. 1331, 1331 (2022).

By further lowering the barriers to certifying classes in inflation-maintenance cases, the Third Circuit's decision threatens to strongarm *amici*'s members into settling cases they otherwise would defend, imposing heavy and unnecessary financial tolls. As this Court has noted, "when damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once," defendants "will be pressured into settling questionable claims" when "[f]aced with even a small chance of a devastating loss." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011). The "risk of 'in terrorem' settlements," *id.*, is high in the securities context, because the sums at issue are astronomical. Since 2020, companies subject to securities class actions have been exposed to an average maximum of $2.29 trillion in annual liability. *See* Cornerstone Rsch., *2025 Midyear Assessment: Securities Class Action Filings* 10 fig. 6 (2025), https://www.cornerstone.com/wp-content/uploads/2025/07/Securities-Class-Action-Filings-2025-Midyear-Assessment.pdf (averaging totals from 2020 through the first half of 2025). Settling for even a

fraction of this amount imposes crushing costs on American businesses (and, ultimately, consumers). But risking class verdicts of anything approaching their total potential exposure could outright ruin securities class-action defendants.

The Third Circuit's ruling, if permitted to stand, will accelerate an already alarming trend. As it is, the inflation-maintenance theory strongly encourages settlements by increasing potential damages amounts and multiplying the total amount of securities litigation. *See* Booth, *supra*, at 171 (noting that inflation-maintenance theory "clearly encourages more litigation and more generous settlements by defendants who fear the potentially devastating consequences of going to trial"). Moreover, there is substantial incentive for lawyers to spin off companies' product-based conduct, which does not directly harm shareholders, into so-called "event-driven" securities class actions like the one here. Strauss, *supra*, at 1334. Indeed, "[t]he average shareholder settlement in cases where the misconduct most directly harms other victims is more than double the average settlement for those cases where the primary victims are shareholders" themselves. *Id.* The Third Circuit's erroneous standards for analyzing correctiveness and newness will only encourage this sort of predatory practice by making class certification easier, thus forcing *amici*'s members to avoid ruinous class litigation by settling cases they normally would fight and win.

Goldman promised to tighten the too-loose standards courts had used to certify classes under the inflation-maintenance theory. But the Third Circuit's

decision neutralizes *Goldman* and lets plaintiffs manufacture their own corrective disclosures. It is thus vital to *amici* and their members that this Court grant certiorari and correct the Third Circuit's egregious errors before they spread.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse.

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