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NY Securities Class Action Ruling Holds Rare Timing Insights

By **Jesse Jensen and Alexandra Forgione** (January 28, 2026, 6:16 PM EST)

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In Leone v. ASP Isotopes Inc., U.S. District Judge Colleen McMahon of the Southern District of New York **issued** a rare securities class action ruling simultaneously on a motion to dismiss and class certification.

This class action was brought under Section 10(b) of the Securities Exchange Act, and the decision denied in part a motion to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and also — in the same ruling — certified those claims to proceed as a class action under Rule 23.[1]

This article discusses the unique posture of this ruling in securities class action litigation and explores certain procedural and substantive implications of this approach.

Court's Discretion on the Timing of Class Certification

Concurrent briefing and simultaneous ruling on both a Rule 12(b)(6) motion to dismiss and a Rule 23 motion for class certification is highly unusual in the securities class action context, for reasons largely specific to this area of law.

Neither Rule 12(b)(6) nor Rule 23 requires resolution in any particular order, nor do they prohibit courts from addressing both concurrently. Rather, Rule 12(b) specifies only that motions to dismiss must be brought before a responsive pleading, i.e., the answer, without any mention of temporal relation to class certification motions.

Rule 23 likewise does not prescribe a specific timeline or sequence with respect to dispositive motions. Before 2003, the rule required that class certification be decided as soon as possible — arguably suggesting Rule 23 class certification issues could, or even should, be resolved before addressing the claims under Rule 12(b)(6).

However, an amendment in 2003 revised the rule to now require only that the court address class certification "at an early practicable time." On its face, this language does not impose any sequencing requirement in relation to motions to dismiss. To the contrary, the amendment was intended to provide courts with greater flexibility to determine when to address class certification.[2]

The principal reason that securities class actions rarely litigate and resolve motions to dismiss and class certification concurrently relates to the Private Securities Litigation Reform Act.

Enacted in 1995 — over 30 years ago — the PSLRA provides that "[i]n any private action arising under" the statute, "all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party."[3]

While at least one court has acknowledged some ambiguity as to whether the PSLRA's reference to "other proceedings" extends beyond discovery-related proceedings — and thus does not per se prohibit the filing or consideration of other motions, such as motions for class certification[4] — the practical effect is essentially the same.

Since the U.S. Supreme Court embraced the fraud-on-the-market rebuttable presumption and largely settled the framework for class certification in securities class actions nearly 40 years ago in Basic Inc. v. Levinson,[5] defendants have aggressively raised evidentiary challenges in an attempt to rebut this presumption, often involving both fact and expert discovery.

In turn, as the Supreme Court recently noted in Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System,[6] courts have "an obligation before certifying a class to 'determin[e] that Rule 23 is satisfied, even when that requires inquiry into the merits,'" and courts must be "open to all probative evidence" as to price impact, which may disrupt the Basic presumption.[7]

Thus, in staying discovery, the PSLRA effectively prohibits class certification until after any motion to dismiss has been decided, regardless of how "other proceedings" is construed.

Courts that have had occasion to examine the issue have reached the same conclusion.

For example, in Rensel v. Centra Tech Inc.,[8] the U.S. Court of Appeals for the Eleventh Circuit ruled that, while courts possess broad discretion in scheduling class certification and managing their

dockets — and further suggested that there are circumstances "in which the propriety of [class] certification was readily discernible from the pleadings" — in general the requirement under Rule 23 that a court make a certification determination as soon as practicable "not only supports the expectation that plaintiffs will have some opportunity for discovery before moving for class certification; it also places the onus of ensuring a timely certification decision on the district court, rather than on plaintiffs."[9]

The Rensel court emphasized that "Plaintiffs were not required to move for PSLRA stay relief in order to expedite the filing of a class certification motion" and "it was not unreasonable for the Plaintiffs to simply wait for the PSLRA stay to expire before conducting class discovery and moving for certification."[10]

The court ultimately found that "the operation of the PSLRA stay in this case effectively prevented the Plaintiffs from moving for class certification any earlier than they did."[11]

This approach accords with the advisory committee notes to the Rule 23 amendment in 2003, which explained that the amendment "captures the many valid reasons that may justify deferring the initial certification decision," including time to conduct discovery in aid of the certification decision.[12]

Leone v. ASP Isotopes Inc.

In Leone, the plaintiff asserts securities claims related to alleged misstatements by ASP Isotopes Inc. and its executives, a development stage advanced materials company, about its ability to enrich uranium using its laser-based Quantum Enrichment technology.

After appointing the lead plaintiff, Judge McMahon entered a schedule setting the deadline for filing the amended complaint, followed by overlapping briefing schedules for both the defendants' anticipated motion to dismiss and, concurrently, the plaintiff's motion for class certification.

The parties timely complied, and, on Dec. 4, 2025, the Leone court issued an extensive 87-page opinion ruling on, first, the motion to dismiss and, second, the motion for class certification.

First, the court granted in part and denied in part the defendants' motion to dismiss. The court rejected several of the alleged misstatements, ruling that those statements were either not false or inactionable opinions.

The court otherwise sustained the complaint, ruling that the plaintiff had adequately alleged actionable misrepresentations by the defendants in claiming that the company had successfully enriched uranium or possessed operational, regulator-ready technology, when neither was true.

Further, the court rejected the defendants' arguments based on supposed earlier disclosures that purportedly warned investors that the company (1) had never tested or used Quantum Enrichment technology to enrich uranium; and (2) had not received the necessary regulatory approvals.

The court noted that these arguments "[i]n essence ... assert a truth-on-the-market defense ... [that] a misrepresentation is immaterial if the information is already known to the market because the misrepresentation cannot then defraud the market."[13]

In rejecting the defendants' arguments and holding that earlier disclosures did not immunize later statements in which the defendants suggested material technological progress or resolution of regulatory hurdles, the court emphasized the demanding standard to assert these sorts of truth-on-the-market defenses, noting that the U.S. Court of Appeals for the Second Circuit had cautioned that the defense is "intensely fact-specific and is rarely an appropriate basis for dismissing a Section 10(b) complaint for failure to plead materiality."[14]

Second, after ruling on the motion to dismiss, the court next addressed the motion for class certification under Rule 23, ruling that the requirements were satisfied.

Among other things, the court credited the expert evidence submitted by the plaintiff and rejected the defendants' attempts to rebut the fraud-on-the-market presumption articulated by the Supreme Court in Basic, noting that the defendants "have submitted no expert report, no event study, and no other evidence to challenge price impact."[15]

The court also rejected the defendants' price impact argument, based on Goldman, that there was a supposed mismatch between the alleged misstatements and corrective disclosure, ruling this argument was "merely a repackaged truth-on-the-market defense that the Court has already rejected" in its Rule 12(b)(6) ruling, as discussed above.[16]

Practical Impact From the Leone Approach

As noted above, courts have generally found that the PSLRA discovery stay effectively precludes resolution of class certification until after the motion to dismiss has been denied.

It is not immediately clear to what extent the impact of the PSLRA discovery stay was considered in Leone; in any event, the parties and the court proceeded to address both Rule 12(b)(6) and Rule 23 issues concurrently.

This posture required the parties to undertake the expense and burden in developing an evidentiary record around class certification at the same time as they briefed existential issues of law around the

validity of the plaintiff's claims — resolution of which had the potential to end the case completely.

As noted above, this is no light burden: Defendants increasingly raise fact- and expert-intensive attacks on class certification, and indeed it appears that the parties in Leone conducted certain discovery in connection with the class certification motion, including fact deposition testimony related to the proposed class representatives.

At the same time, the approach in Leone potentially limited far-ranging discovery in pursuit of more novel attacks on class certification. Indeed, as the court noted, the defendants "submitted no expert report, no event study, and no other evidence to challenge price impact," and further ruled parts of their opposition merely repackaged from their Rule 12(b)(6) arguments and rejected for much the same reasons.[17]

The Leone approach did, however, potentially raise an opportunity for earlier appellate consideration. Courts generally do not permit interlocutory appeal, including as to a ruling denying a motion to dismiss.

However, Rule 23(f) expressly provides for possible interlocutory appeal of class certification. Thus, the unique posture in ruling on class certification concurrently with the motion to dismiss conceivably opens the door to appeal earlier than would typically occur in securities class action litigation.

It does not appear that the Leone defendants pursued such appeal, the deadline for which expired 14 days after the order. Even if they did, however, Rule 23(f) limits appeal to class certification, and further makes clear that appeal does not necessarily stay the case.

Conclusion

In requiring overlapping briefing on both the motion to dismiss and motion for class certification at the outset of the case, the district court in Leone utilized its discretion in scheduling and resolved both issues early.

In doing so, the district court altered the ordinary course of securities class action litigation, including by front-loading certain fact- and expert-specific issues and the prospect of interlocutory appeal.

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[1] Leone v. ASP Isotopes Inc. , Case 1:24-cv-09253-CM, 2025 WL 3484821 (S.D.N.Y. Dec. 4, 2025).

[2] See generally 3 Newberg and Rubenstein on Class Actions § 7:9 (6th ed.).

[3] 15 U.S.C. § 78u-4(b)(3)(B).

[4] In re: Diamond Multimedia Sys., Inc. Sec. Litig. , 1997 WL 773733, at *1, 3-4 (N.D. Cal. Oct. 14, 1997) (noting certification was not stayed by the PSLRA and appropriate where defendants were willing to stipulate to certification); but see Vignola v. FAT Brands Inc. , 2019 WL 13038337, at *2 (C.D. Cal. Dec. 3, 2019).

[5] Basic Inc. v. Levinson, 485 U.S. 224 (1988).

[6] Goldman Sachs Grp. Inc. v. Arkansas Tchr. Ret. Sys. , 594 U.S. 113 (2021).

[7] Id. at 122.

[8] Rensel v. Centra Tech Inc. , 2 F.4th 1359, 1361 (11th Cir. 2021).

[9] Id. at 1367.

[10] Id. at 1367-68.

[11] Id. at 1365 n.2. See also, e.g., In re: Wayfair, Inc. Sec. Litig. , 471 F. Supp. 3d 332, 337-38 (D. Mass. 2020) ("In light of the rigorous analysis I would be required to undertake in order to determine whether class certification is appropriate in this Private Securities Litigation Reform Act litigation, I am of the view that addressing the case at the threshold through a motion to dismiss is the best course.").

[12] Federal Rule of Civil Procedure 23, Committee Notes on Rules—2003 Amendment.

[13] Leone, 2025 WL 3484821, at *7.

[14] Id.

[15] Id. at *33.

[16] Id. at *39-41.

[17] Id. at *33.