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## Supreme Court Rules that Individual Securities Fraud Claim Was Filed Too Late

On June 26, 2017, a divided Supreme Court, in the case of California Public Employees' Retirement System v. ANZ Securities, Inc., held that a member of a putative class in a timely-filed class action who later elected to withdraw and file its own separate suit, was barred from proceeding because its suit was filed too late.

Under Section 11 of the Securities Act of 1933 (the "Act"), purchasers of securities have a right of action against an issuer and others, including underwriters, for material misstatements or omissions in a registration statement. Under Section 13 of the Act, no action may be brought under Section 11 more than three years after the securities were bona fide offered to the public.

In 2008, a putative class action was filed in the Southern District of New York against Lehman Brothers and other financial firms arising from several of Lehman's public offerings, alleging various Section 11 violations in its offering documents. In February 2011, more than three years following the offerings, CalPERS, the largest public pension fund in the country, filed a separate complaint against Lehman Brothers and other financial firms in the Northern District of California, alleging various Section 11 violations. When a settlement of the putative class action was reached, CalPERS opted out of the settlement. Lehman Brothers then sought dismissal of CalPERS's individual suit, claiming that it was untimely under the three-year bar in Section 13. CalPERS argued that the three-year period was tolled during the pendency of the class action, citing certain precedent. CalPERS lost in the district and circuit courts.

The Supreme Court held that the three-year bar, based on its language and structure, was a statute of repose, whose purpose was to "effect a legislative judgment that a defendant should be free from liability after the legislatively determined period of time." The Supreme Court distinguished a statute of repose, which is enacted to give more protection to a defendant, from a statute of limitations, whose purpose is to encourage plaintiffs "to pursue diligent prosecution of known claims" and whose time limitations may be tolled by equitable considerations. The four dissenters would have held that since the class action informed defendants of the substance of the claims against them and the names of the potential claimants within the three-year bar, the individual suit by CalPERS had been timely filed.

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