

A TALE OF TWO TRIALS:
THE PAST DECADE IN SECURITIES CLASS ACTION JURY VERDICTS

Jordan Eth
Ryan Keats
Morrison & Foerster LLP
January 14, 2022

I. INTRODUCTION

In November 2007, a nine-person jury returned a unanimous defense verdict in what is perhaps the largest federal securities fraud class action jury trial, *In re JDS Uniphase Corporation Securities Litigation*.¹ Plaintiffs sought approximately \$20 billion in damages based on their allegations that JDSU’s executives had misled investors and engaged in insider trading.² Plaintiffs did not challenge the verdict, and they did not appeal.³ It was a clean and complete defense victory.

Four years later, we observed that JDSU remained unique.⁴ After JDSU, only a handful of securities class actions had gone to trial. Not one of those trials resulted in a clean victory for either party.⁵ Nor did trial mark the end of any of those cases.⁶ Instead, litigation continued to grind on for years after the jury reached its verdict.⁷ Based on the trends observed in those cases, we predicted that, “future clean victories for either side will remain elusive.”⁸

So far, that prediction has held up. In the past decade, there have been only two trials of federal securities fraud class actions.⁹ Both cases reached a jury verdict. Neither of those verdicts, however, represented a clear win for either party, and neither trial ended the case. Once again, the jury’s verdicts were the prelude to further rounds of litigation. That post-trial litigation had significant implications for

¹ Jordan Eth and Timothy Blakely, *Lessons for Securities Litigators from the JDS Uniphase Corporation Securities Litigation Trial*, 1692 Practising Law Institute Corporate Law and Practice Handbook Series 361, 367 (2008).

² *Id.* at 367.

³ Jordan Eth and Emily Richman, *Securities Class Action Jury Trials Since In re JDS Uniphase Corporation Securities Litigation: No Clean Victories*, 1950 Practising Law Institute Corporate Law and Practice Course Handbook Series 279, 285 (2012).

⁴ *Id.* at 281.

⁵ *Id.* at 281-282.

⁶ *Id.*

⁷ *Id.* at 282.

⁸ *Id.* at 299.

⁹ Stanford Law School Securities Class Action Clearinghouse. A third jury verdict, *Audet v. Fraser*, No. 3:16-CV-940 (D. Conn. Nov. 1, 2021) is not discussed here as that case involves cryptocurrency-related products, which the jury found were not securities.

plaintiffs' anticipated recovery, and it ultimately led the parties in both matters to settle. Below, we summarize those two recent cases and note three key takeaways based on those trials.¹⁰

II. BACKGROUND

A. *Longtop Financial Technologies Ltd. Securities Litigation.*

Longtop Financial Technologies Ltd. Securities Litigation was filed in May 2011 in the Southern District of New York.¹¹ Plaintiffs asserted claims against Longtop, its auditors, and several of its officers and directors.¹² The complaint alleged that Longtop had misrepresented its financial results.¹³ The claims against the auditors and several of the individual defendants were dismissed.¹⁴ After plaintiffs obtained a default judgment against Longtop and its former CEO, the case proceeded to trial against Longtop's former CFO, Derek Palaschuk.¹⁵ On November 21, 2014, the parties commenced a four-day trial on liability.¹⁶ The jury deliberated for only a few hours before finding in favor of plaintiffs as to all eight challenged statements.¹⁷ Three days later, following a one-day damages trial, the jury rendered a damages verdict and apportioned liability of 1% of the damages to Palaschuk.¹⁸ After briefing on post-trial issues began, the parties reached an agreement to settle the action for \$2.3 million.¹⁹ On April 24, 2017—six years after plaintiffs filed the case—the court approved distribution of the settlement fund to the shareholder class.²⁰

¹⁰ From 1997 to 2020, only 0.2% of federal securities fraud class actions were tried to a verdict. Cornerstone Research, *Securities Class Action Filings—2020 Year in Review*, at 18 (Apr. 3, 2020), available at <https://www.cornerstone.com/wp-content/uploads/2021/12/Securities-Class-Action-Filings-2020-Year-in-Review.pdf>.

¹¹ *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC (S.D.N.Y. May 27, 2011).

¹² Kevin LaCroix *Rare Securities Suit Trial Produces Jury Verdict against Former Longtop Financial CFO*, The D&O Diary (Nov. 24, 2014), <https://www.dandodiary.com/2014/11/articles/securities-litigation/rare-securities-suit-trial-produces-jury-verdict-against-former-longtop-financial-cfo/>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*; *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Stipulation and Agreement of Settlement, Dkt. No. 294 at 5 (S.D.N.Y. July 1, 2011).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 6.

²⁰ *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Order Approving Distribution of Net Settlement Fund, Dkt. No. 312 (S.D.N.Y. Apr. 24, 2017).

B. *Hsu v. Puma Biotechnology, Inc.*

Hsu v. Puma Biotechnology, Inc. was filed in June 2015 in the Central District of California.²¹ Plaintiffs alleged that Puma, its CEO, and its Senior Vice President of Finance misled the public about the clinical trial results for Puma's breast cancer drug.²² The court dismissed the claims against Puma's former SVP of Finance on summary judgment.²³ Trial commenced against Puma and its CEO in January 2019.²⁴ After a two-week trial, the jury found defendants liable for only one of the four alleged misstatements.²⁵ In December 2021, after almost three years of post-trial litigation and six years after the complaint was filed, the parties reached an agreement to settle the case for \$54.2 million.²⁶ That settlement remains subject to court approval.

III. TAKEAWAYS

A. Clean Victories Remain Elusive.

Litigators often view trial as the final match, and the jury's verdict as definitively establishing a victor. In both *Puma* and *Longtop*, however, the jury verdicts were a mixed bag, rather than a decisive win. In fact, after the jury rendered its verdict in *Puma*, both sides claimed victory.²⁷ Plaintiffs declared that "bad actors" were being held responsible for investor losses and highlighted the jury's finding that defendants had knowingly deceived the market.²⁸ Meanwhile, Puma emphasized that the jury exonerated defendants as to three of the four alleged misstatements and awarded damages of less than 5% of what plaintiffs had sought.²⁹

²¹ *Hsu v. Puma Biotechnology, Inc.*, No. 8:15-cv-00865-DOC-SHK (C.D. Cal. June 3, 2015).

²² *Hsu v. Puma Biotechnology, Inc.*, No. 8:15-cv-00865-DOC-SHK, 2018 WL 4945703, at *1 (C.D. Cal. Oct. 5, 2018).

²³ *Id.* at *11.

²⁴ Meghann Cuniff, *Defense Limits Damages in Major Securities Fraud Verdict*, Daily Journal (Feb. 5, 2019), <https://www.lw.com/mediaCoverage/defense-limits-damages-securities-fraud-verdict>.

²⁵ *Id.*

²⁶ Brendan Pierson, *Puma Biotech Agrees to Pay Investors \$54.2 mln in Fraud Case*, Reuters (Dec. 14, 2021), <https://www.reuters.com/legal/government/puma-biotech-agrees-pay-investors-542-mln-fraud-case-2021-12-14/>.

²⁷ Allison Frankel, *In Rare Class Action Trial, Jury Finds Puma Biotech Liable for Fraud – but Puma Claims Victory*, Reuters (Feb. 5, 2019), <https://www.reuters.com/article/us-otc-puma/in-rare-class-action-trial-jury-finds-puma-biotech-liable-for-fraud-but-puma-claims-victory-idUSKCN1PU2LF>.

²⁸ *Id.*

²⁹ Press Release, Puma Biotechnology Inc., *Puma Biotechnology Announces Litigation Victory with Jury's Decision*, (Feb. 4, 2019), <https://www.businesswire.com/news/home/20190204005852/en/Puma-Biotechnology-Announces-Litigation-Victory-Jury%E2%80%99s-Decision>.

In *Longtop*, plaintiffs hit a home run on liability. Their post-trial press release emphasized that the jury had deliberated for less than three hours before finding liability as to all eight alleged misstatements.³⁰ Just three days later, however, the jury rendered a damages award that apportioned only 1% liability to the sole defendant at trial. By plaintiffs' own telling, that award amounted to approximately \$6.3 million of the hundreds of millions of dollars in damages that they had sought.³¹ While plaintiffs continued to emphasize that they had obtained an \$882 million default judgment against the company and its former CEO, they conceded that it was highly uncertain whether they would ever be able to recover any of that money.³² They never did.³³

B. The Judicial Odyssey Continues Long After the Verdict.

In 2012, we observed that all of the post-JDSU securities class actions experienced messy, complex post-trial litigation.³⁴ Even after the factfinder renders a liability and damages verdict for the plaintiffs, many questions remain. Defendants may seek to rebut the presumption that the individual members of the shareholder class relied on the alleged misstatements, which can involve discovery from the individual class members, summary judgment, and even mini-trials.³⁵ Plaintiffs may move for prejudgment interest, raising questions of whether such interest should be awarded and the way to calculate the appropriate amount.³⁶ In addition, the court will appoint a claims administrator to determine the shares eligible for recovery and the exact amount due to each class member. That process is yet another front on which the parties may litigate – challenging the notice, the claims submitted, and the

³⁰ Press Release, Kessler Topaz Meltzer & Check LLP, Kessler Topaz Wins in Rare Securities Fraud Trial, (May 1, 2015), <https://www.ktmc.com/news/kessler-topaz-wins-in-rare-securities-fraud-trial>.

³¹ Press Release, Kessler Topaz Meltzer & Check LLP, *Lead Counsel Announce Proposed Settlement With Defendant Derek Palaschuk in the In re Longtop Financial Technologies Limited Securities Litigation* (Jul. 20, 2015), <https://www.prnewswire.com/news-releases/lead-counsel-announce-proposed-settlement-with-defendant-derek-palashuk-in-the-in-re-longtop-financial-technologies-limited-securities-litigation-300113371.html>; *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, Motion for Preliminary Approval of Proposed Settlement, at 12 (S.D.N.Y. June 19, 2015).

³² *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Memorandum of Law In Support of Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Settlement, Dkt. No. 292 at 7 n.4 (S.D.N.Y. June 19, 2015).

³³ Jesse M Fried and Ehud Kamar, China and the Rise of Law-Proof Insiders, European Corporate Governance Institute - Law Working Paper 557/2020, at 23 n.124 (February 15, 2021), <https://ssrn.com/abstract=3740223>.

³⁴ Eth and Richman, *supra*, at 282.

³⁵ *Id.* at 297-98.

³⁶ *See, e.g., Hsu v. Puma Biotechnology Inc.*, No. 8:15-cv-00865-DOC-SHK, Defendants' Objections to Plaintiffs' Notice of Proposed Judgment, Dkt. No. 732 at 17 (C.D. Cal. Mar. 15, 2019).

methods for calculating the amounts awarded.³⁷ On top of all that, there is the potential for appeals.³⁸ As both *Puma* and *Longtop* demonstrate, post-trial litigation is time consuming, expensive, and comes with the risk of reducing plaintiffs' verdict.

In *Longtop*, even the threat of Phase II litigation drove the parties to settlement. After plaintiffs moved to appoint a claims administrator, the defendant requested that the court establish a procedure for him to review claims and rebut the presumption of reliance.³⁹ The parties reached an agreement to settle the action just a few months later, before those motions were decided.⁴⁰ In their papers seeking settlement approval, plaintiffs explained that a significant motivation for settling was to avoid the risk that defendant's challenges to the claims administration process and attempts to rebut the presumption of reliance would further reduce the recovery to the class.⁴¹ Plaintiffs warned that, if litigation were to continue, such challenges would result in costly and time-consuming mini-trials and that "many additional years could pass before the Class would receive a recovery, if any."⁴²

In *Puma*, post-trial litigation continued for nearly three years. After the verdict was rendered, the parties spent more than six months litigating issues related to the claims administration process before it even began. Once underway, it took a full year for the claims administrator to confirm more than 4,600 individual claims.⁴³ Thereafter, Defendants sought discovery and a trial on issues related to individual

³⁷ See, e.g., *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Defendant's Partial Opposition to, Request for Modification of, and Response to Plaintiffs' Motion for Approval of Proposed Notice and Claims Administration and the Allocation of the Costs Thereof, Dkt. No. 280 (S.D.N.Y. Feb. 27, 2015).

³⁸ In *Apollo*, for example, after the jury rendered a verdict in favor of plaintiffs, the district court granted defendants' motion for judgment as a matter of law on loss causation. Plaintiffs appealed, and the Ninth Circuit reversed. The Supreme Court denied certiorari. The case returned to the district court, and defendants raised numerous post-trial issues before the parties agreed to settle. Kevin LaCroix, *After Rare Trial and Lengthy Appeals, Apollo Group Securities Suit Finally Settles for \$145 Million*, The D&O Diary (Dec. 5, 2011), <https://www.dandodiary.com/2011/12/articles/securities-litigation/after-rare-trial-and-lengthy-appeals-apollo-group-securities-suit-finally-settles-for-145-million/>.

³⁹ See, e.g., *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Defendant's Partial Opposition to, Request for Modification of, and Response to Plaintiffs' Motion for Approval of Proposed Notice and Claims Administration and the Allocation of the Costs Thereof, Dkt. No. 280 at 8-9 (S.D.N.Y. Feb. 27, 2015).

⁴⁰ *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Stipulation and Agreement of Settlement, Dkt. No. 294 at 6 (S.D.N.Y. July 1, 2011).

⁴¹ *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation, Dkt. No. 297 at 1 (S.D.N.Y. Sept. 8, 2015).

⁴² *Id.* at 13.

⁴³ Press Release, Robbins Geller Rudman & Dowd LLP, *Robbins Geller Rudman & Dowd LLP Announces Jury Verdict Finding Puma Biotechnology and CEO Alan Auerbach Committed Securities Fraud Results in Damages Three to Six Times Higher Than the Company Claimed* (Sept. 8, 2020),

reliance and damages. Defendants challenged 1,350 of the claims received, representing millions of dollars in damages.⁴⁴ For over a year, the parties litigated the scope of appropriate discovery and defendants' entitlement to a trial on individual reliance. While those disputes remained pending, the parties reached an agreement in principle to settle the action.

C. Investing In A Securities Fraud Class Action Trial Involves Risk, Including Loss of Principal.

Securities fraud class actions often generate headlines with eye-popping damages numbers. Plaintiffs typically bring suit following a significant stock drop and seek to recover a large chunk of the decline in market capitalization.⁴⁵ There have been numerous multi-billion dollar settlements.⁴⁶ And, in one trial, plaintiffs obtained a judgment in excess of a billion dollars.⁴⁷ But, as *Puma* and *Longtop* illustrate, massive jury verdicts are far from typical.⁴⁸ Securities fraud class actions that go to trial are almost always long, drawn-out battles that yield mixed results.

Plaintiffs in *Longtop* sought damages of more than \$800 million.⁴⁹ After the jury rendered its verdict, plaintiffs estimated its value at \$6.3 million.⁵⁰ Rather than risk further reductions in the value of

<https://www.rgrdlaw.com/news-press-Announces-Jury-Verdict-Finding-Puma-Biotechnology-and-CEO-Alan-Auerbach-Committed-Securities-Fraud.html>.

⁴⁴ *Hsu v. Puma Biotechnology Inc.*, No. 15-cv-0865-DOC-SHK, Defendants' Memorandum of Law in Support of Their Motion to Exclude Claims, Dkt. No. 843-1 at 7 (C.D. Cal. Aug. 16, 2021); *Hsu v. Puma Biotechnology Inc.*, No. 15-cv-0865-DOC-SHK, Defendants' Reply in Support of Motion to Exclude Claims, Dkt. No. 868 at 8, 10, 17 (C.D. Cal. Oct. 11, 2021).

⁴⁵ Cornerstone Research, *Securities Class Action Filings—2020 Year in Review*, <https://www.cornerstone.com/wp-content/uploads/2021/12/Securities-Class-Action-Filings-2020-Year-in-Review.pdf>.

⁴⁶ Stanford Law School Securities Class Action Clearinghouse, *Top Ten by Largest Settlement*, <https://securities.stanford.edu/top-ten.html>.

⁴⁷ Robbins Geller Rudman & Dowd LLP, *Jaffe v. Household Int'l, Inc.*, <https://www.rgrdlaw.com/cases-Household-class-action-recovery-trial.html>.

⁴⁸ The vast majority of securities fraud class actions are either dismissed or settled. Cornerstone Research, *Securities Class Action Filings—2020 Year in Review*, at 18 (Apr. 3, 2020), available at <https://www.cornerstone.com/wp-content/uploads/2021/12/Securities-Class-Action-Filings-2020-Year-in-Review.pdf>. For those that settle, the median settlement amount in 2020 was \$13 million, with an average settlement of \$44 million. Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review*, at 1-2, <https://www.nera.com/publications/archive/2021/recent-trends-in-securities-class-action-litigation--2020-full-y.html>.

⁴⁹ Kevin LaCroix, *Shareholders Obtain \$882 Million Default Judgment in Longtop Financial Securities Suit*, *The D&O Diary* (Nov. 20, 2013), <https://www.dandodiary.com/2013/11/articles/securities-litigation/shareholders-obtain-882-million-default-judgment-in-longtop-financial-securities-suit/>.

⁵⁰ As plaintiffs later acknowledged, however, that \$6.3 million figure assumed “that *all* Trial Class members would submit valid claims, which is extremely unlikely, given the passage of time, typical

the judgment through post-trial litigation, they settled the case for \$2.3 million, which class counsel characterized as “eminently fair,” emphasizing that it would provide the “Class Members with prompt, efficient, and guaranteed relief.”⁵¹ The settlement fund was further reduced based on fees and expenses associated with litigating the case and administering the settlement.⁵² After accounting for those deductions, approximately \$1.75 million was distributed to the shareholder class, more than six years after the litigation began.⁵³ Plaintiffs’ counsel, who successfully litigated the case through trial, received reimbursement only for \$500,000 of the more than \$750,000 in out-of-pocket expenses they incurred.⁵⁴ They received no fees for the years that they spent prosecuting the action.

In *Puma*, plaintiffs sought more than one billion dollars in damages.⁵⁵ After the jury rendered its verdict, plaintiffs’ counsel estimated that shareholders would receive up to \$100 million.⁵⁶ The claims process reduced the amount of recoverable damages to \$54.2 million, and that was before defendants raised challenges to the claims or had a chance to rebut the presumption of reliance as to individual class members.⁵⁷ The parties subsequently settled for the total amount of the validated claims.⁵⁸ Plaintiffs’

failure to retain supporting documentation and the fact that the jury only apportioned one percent of the total damages award to Palaschuk.” *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation, Dkt. No. 297 at 18-19 (S.D.N.Y. Sept. 8, 2015).

⁵¹ *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation, at 3, 14 (S.D.N.Y. Sept. 8, 2015).

⁵² *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Order on Class Counsel’s Motion for Reimbursement of Litigation Expenses, Dkt. No. 306 (S.D.N.Y. Oct. 13, 2015).

⁵³ *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Order Approving Distribution of Net Settlement Fund, Dkt. No. 312 (S.D.N.Y. Apr. 24, 2017).

⁵⁴ *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 1:11-cv-03658-VEC, Class Counsel’s Motion for Reimbursement of Litigation Expenses, Dkt. No. 298 (S.D.N.Y. Sept. 8, 2015).

⁵⁵ Jenna Greene, *Wait, What? Opposing Counsel Latham and Robbins Geller Both Claim They Won Puma Securities Trial*, The Recorder (Feb. 6, 2019), <https://www.law.com/therecorder/2019/02/06/daily-dicta-wait-what-opposing-counsel-latham-and-robbins-geller-both-claim-they-won-puma-securities-trial-403-29497/>.

⁵⁶ Press Release, Robbins Geller Rudman & Dowd LLP, *Robbins Geller Rudman & Dowd LLP Announces Plaintiff’s Verdict in Securities Class Action Trial Against Puma Biotechnology, Inc. and Its CEO, Alan H. Auerbach* (Feb. 4, 2019), <https://www.rgrdlaw.com/news-item-Robbins-Geller-Announces-Verdict-in-Trial-Against-Puma-Biotechnology.html>.

⁵⁷ Press Release, Robbins Geller Rudman & Dowd LLP, *Robbins Geller Rudman & Dowd LLP Announces Jury Verdict Finding Puma Biotechnology and CEO Alan Auerbach Committed Securities Fraud Results in Damages Three to Six Times Higher Than the Company Claimed* (Sept. 8, 2020), <https://www.rgrdlaw.com/news-press-Announces-Jury-Verdict-Finding-Puma-Biotechnology-and-CEO-Alan-Auerbach-Committed-Securities-Fraud.html>.

⁵⁸ Press Release, Robbins Geller Rudman & Dowd LLP, *Robbins Geller Rudman & Dowd LLP Announce Proposed Settlement in the Puma Biotechnology, Inc. Securities Settlement* (Jan. 11, 2022),

counsel plans to request an attorney's fees award for 25% of the settlement fund as well as reimbursement for more than \$3 million in expenses.⁵⁹ That request has not yet been filed, so it remains to be seen how those fees will compare to the value of the time invested in litigating the case over the course of six years.

IV. CONCLUSION

Nearly fifteen years later, the decisive defense verdict that ended the litigation in JDSU remains an outlier. The outcomes in *Longtop* and *Puma* join the earlier group of post-JDSU cases as marked by mixed results for both sides, rather than a definitive win for either. As those trials illustrate, clean victories for either side are likely to remain elusive in the years to come.

<https://www.businesswire.com/news/home/20220111005136/en/Robbins-Geller-Rudman-Dowd-LLP-Announce-Proposed-Settlement-in-the-Puma-Biotechnology-Inc.-Securities-Settlement>.

⁵⁹ *Id.*