

# *The Financial Impact of COVID-19*

**Securities Litigation Precipitated by the COVID-19 Crash**

**Steven Feinstein, PhD, CFA**



**BABSON**

STEPHEN D. CUTLER  
CENTER FOR INVESTMENTS  
AND FINANCE

20TH ANNIVERSARY / 2000-2020

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- Moderator will collect questions asked through the chat feature during the presentation.
- Questions will be answered at the end of the presentation.



**Your facilitator:**

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Associate Professor of Finance (Feinstein@babson.edu)

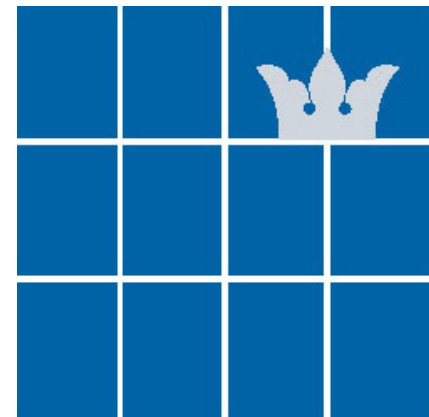
Founder and Senior Expert at Crowninshield Financial Research, Inc.

Faculty Profile: [Click Here](#)



## My Work at Crowninshield Financial Research, Inc.

- Provide expert research, analysis, and testimony.
- Crowninshield's experts have delivered expert analysis and testimony in numerous high-profile cases:
  - *Petrobras Securities Litigation*
  - *American Realty Capital Properties, Inc. Securities Litigation*
  - *AIG Securities Litigation*
  - *Valeant Pharmaceuticals Securities Litigation*
  - *Mop-Up after 2007-2008*





**About Crowninshield Financial Research, Inc.**



Daniel Bettencourt  
Vice President  
MBA, Class of 2009



Alexander Huang  
Senior Associate  
BA, Class of 2015



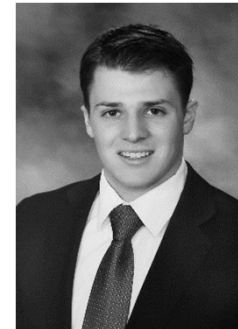
Rashi Agarwal  
Senior Associate  
MBA, Class of 2017



Shaban Hani  
Analyst  
MSF, Class of 2018



C. Jack Long  
Analyst  
BA, Class of 2015  
MSF, Class of 2018



Drew Guadagno  
Analyst  
BA, Class of 2019

## Class Action Securities Litigation

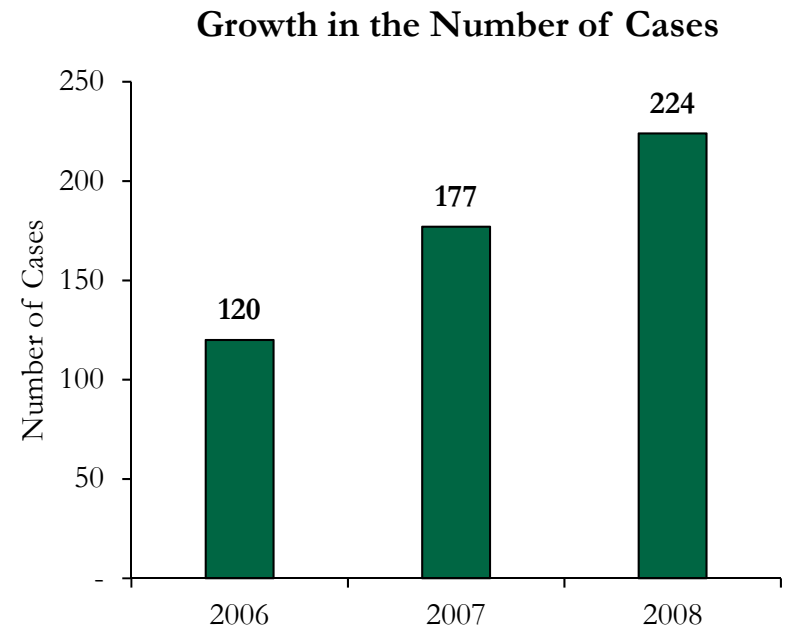
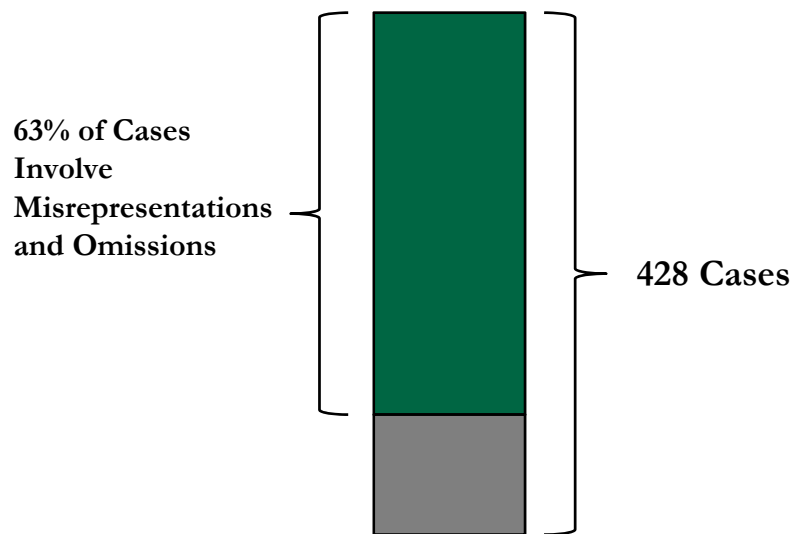
- When a company makes misrepresentations or omissions that cause investor losses, investors can pursue legal action to recover damages.
- Investors are protected by:
  - The 1933 Securities Act,
  - The 1934 Exchange Act,
  - SEC rules promulgated thereunder,
  - Subsequent legislation (PSLRA 1995),
  - Case law.
- The role of the finance expert.

**SEC Rule 10b-5**

It shall be unlawful ... to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make statements made not misleading.

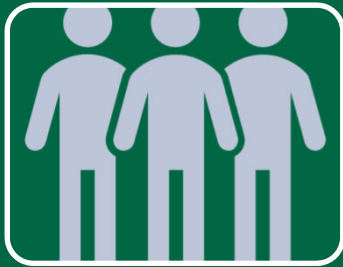
## Class Action Securities Cases

- 428 class action securities cases were filed in 2019.
- 268 of these were securities fraud cases alleging misstatements and omissions.



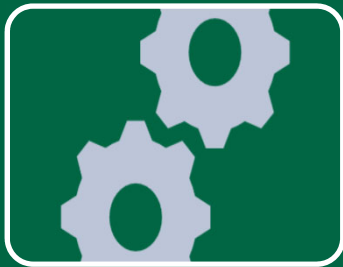
Source: "Securities Class Action Filings 2019 Year in Review," by Cornerstone Research.

## Valuable Functions of Securities Law and Enforcement



### Classical Agency Problem

- Corporations are owned by investors, but run by agents
- Rules protect investors



### Operational Efficiency

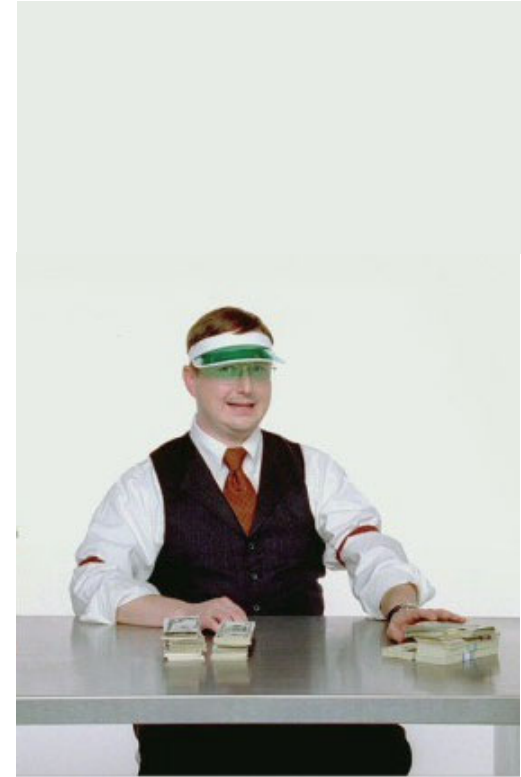
- No one wants to play a rigged game
- Mobilizing capital requires fairness



### Prosperity

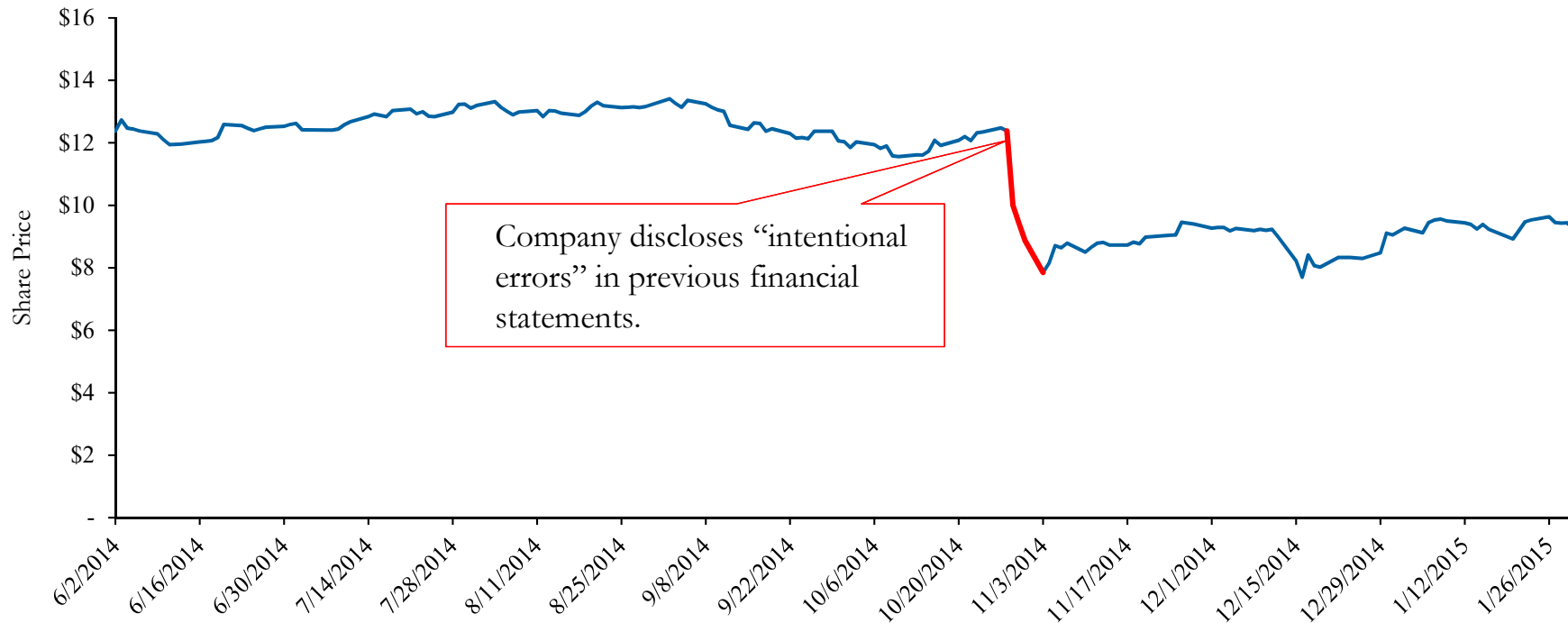
- System of laws protecting private property
- Entrepreneurship



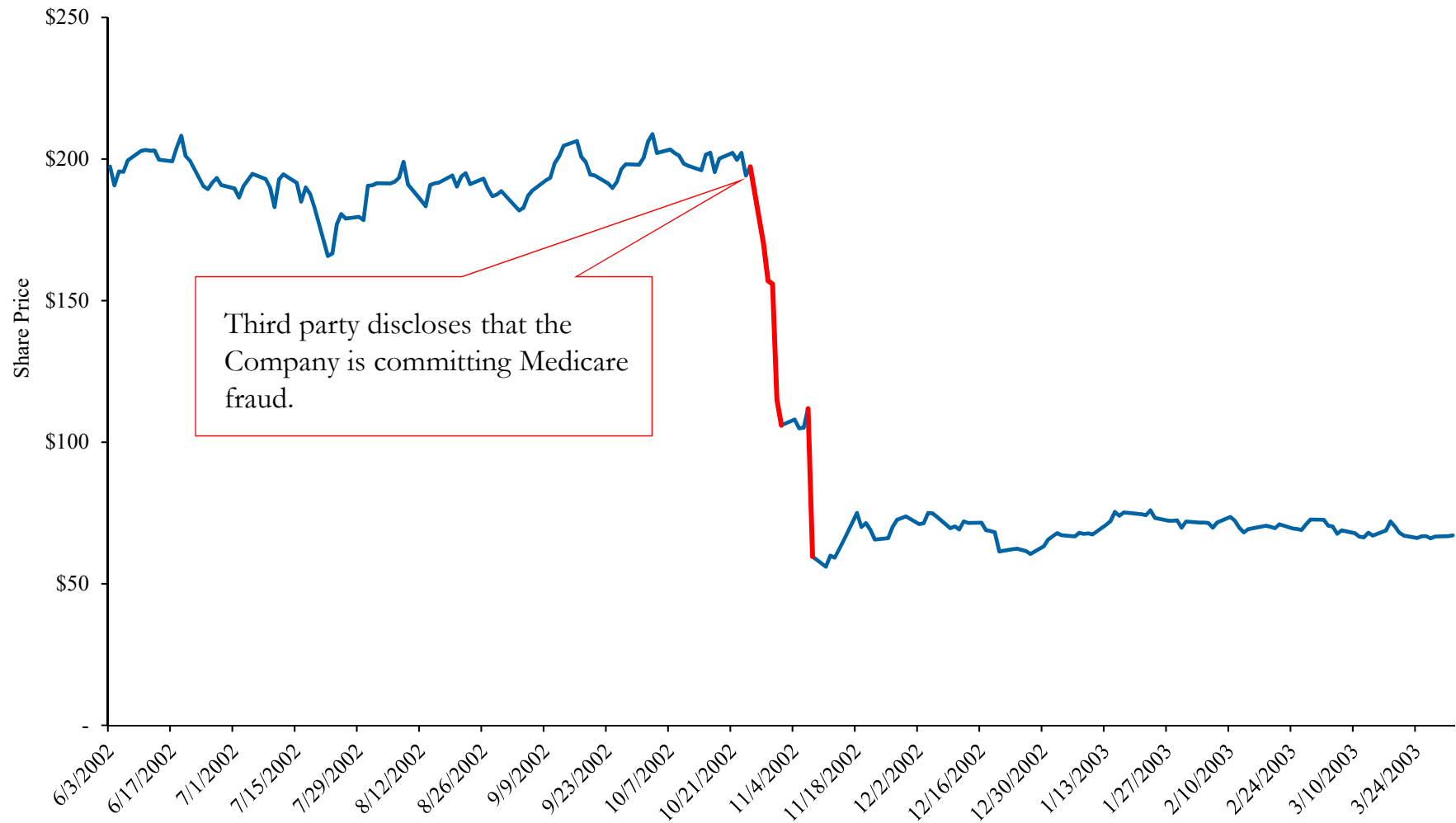


## Typical Securities Fraud Fact Pattern

- A company makes material misrepresentations or omissions to investors.
- Security price is artificially inflated. New investors overpay.
- Later corrective disclosures dissipate inflation. Stock price declines.
- Investors sustain losses.
- Claim/litigation allows investors to recover losses sustained due to misrepresentations and omissions.



# Tenet Example



## The COVID Crash

S&P 500

- Declined 22% since the beginning of this year.

Russell 2000

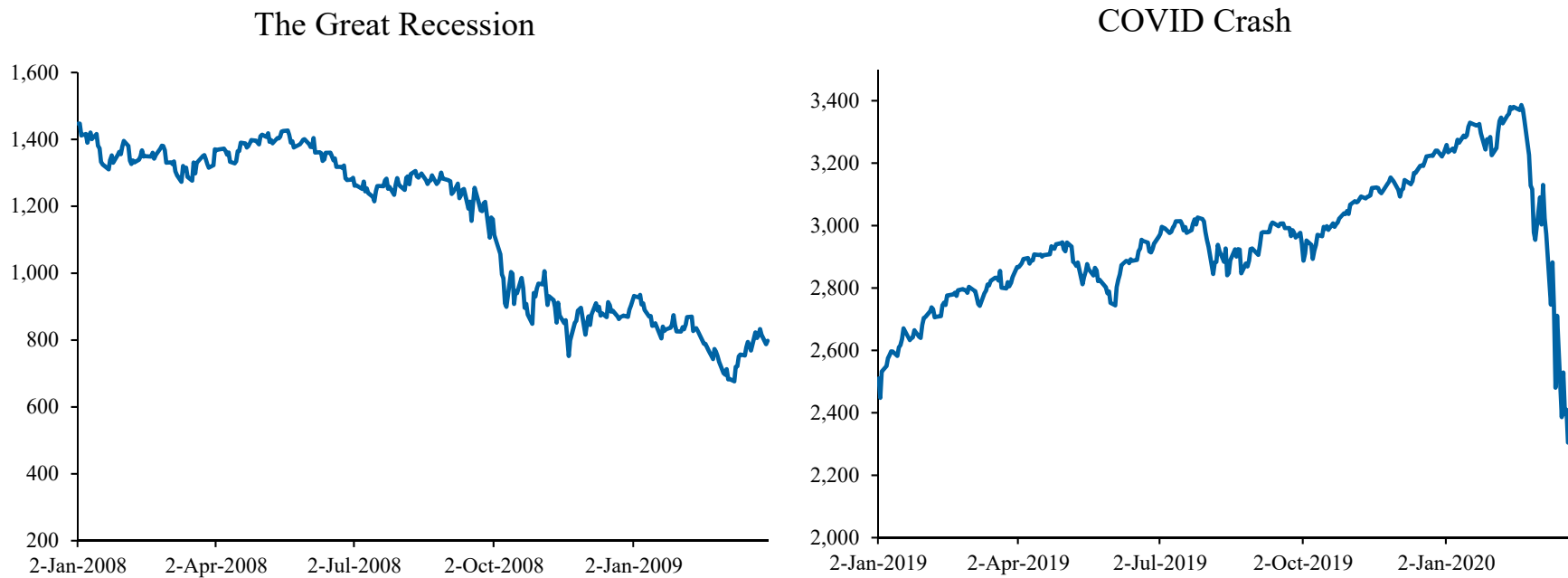
- Declined 35% since the beginning of this year.

MSCI World  
Index

- Declined 24% since the beginning of this year.

# The Great Recession vs. COVID Crash

## S&P 500 Index

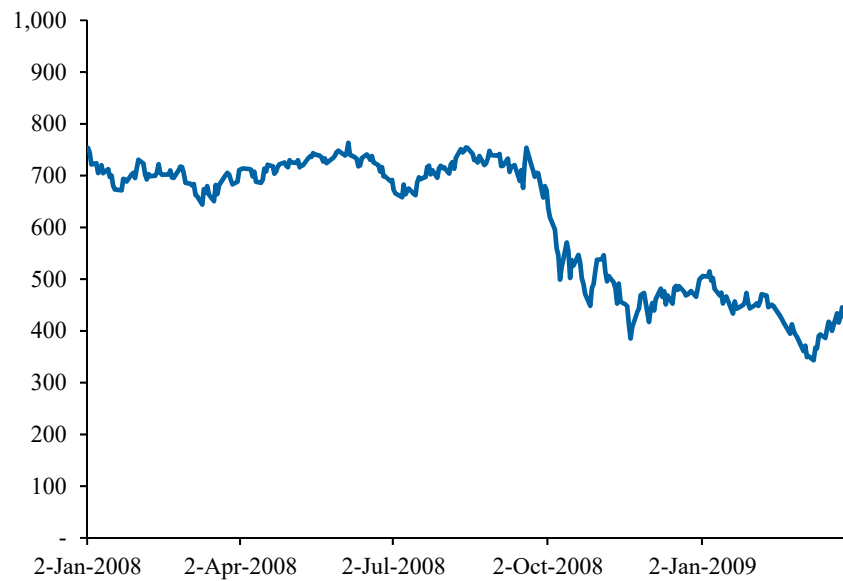


Source: Thomson Eikon

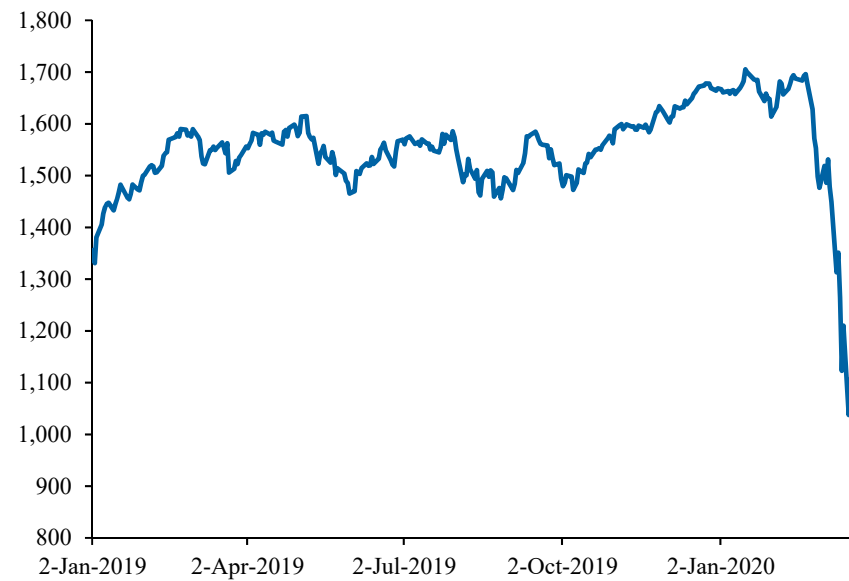
# The Great Recession vs. COVID Crash

## Russell 2000 Index

The Great Recession



COVID Crash

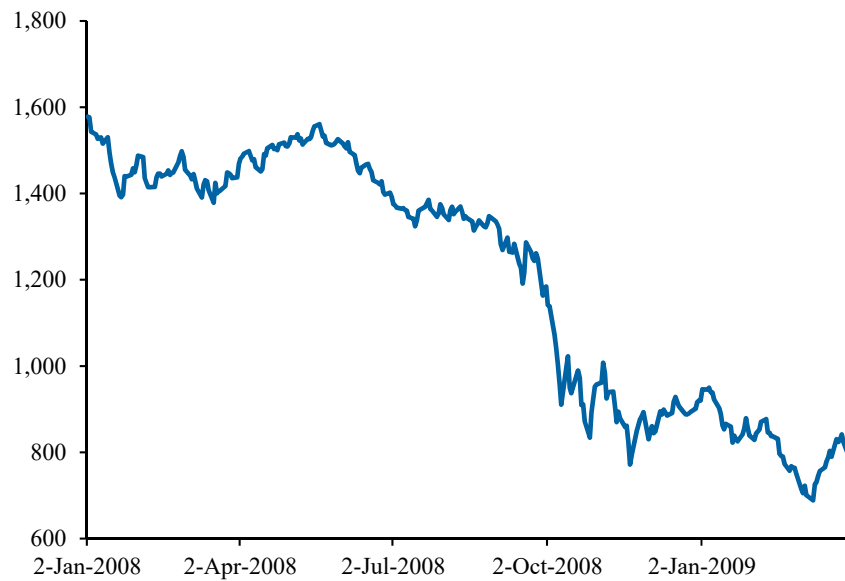




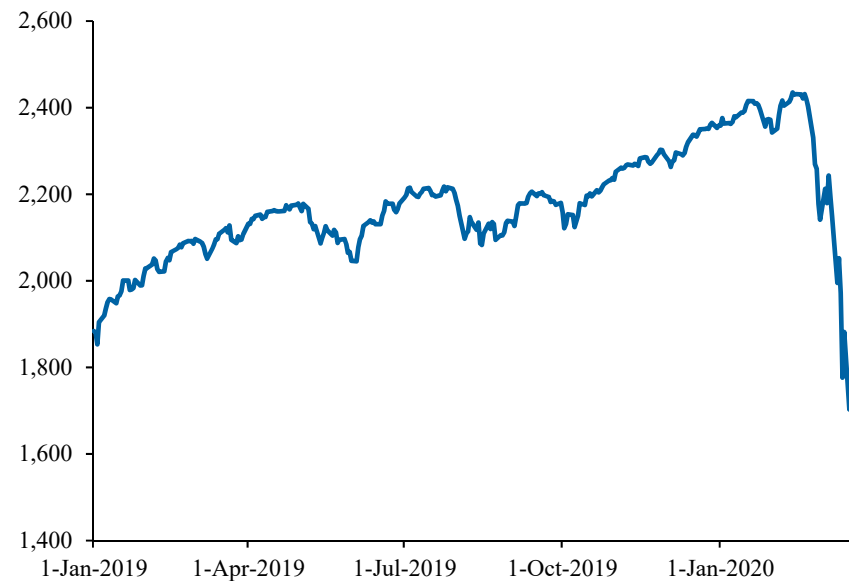
# The Great Recession vs. COVID Crash

## MSCI International World Price Index

The Great Recession

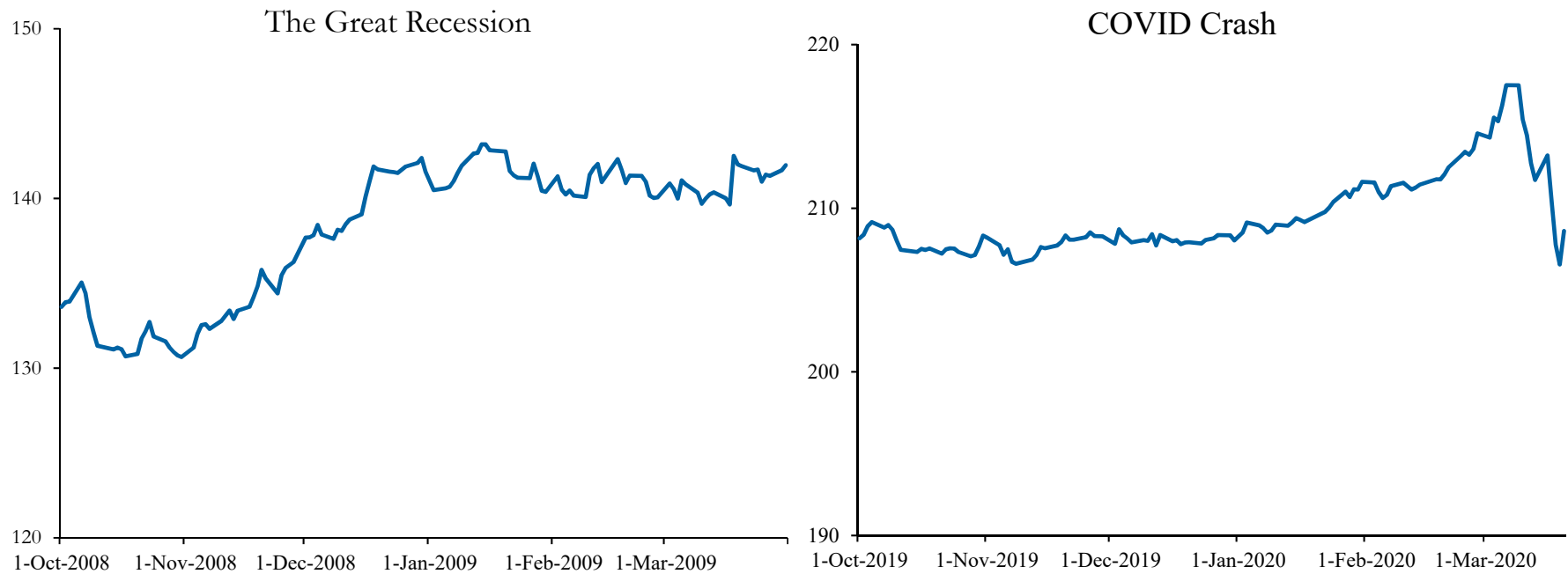


COVID Crash



# The Great Recession vs. COVID Crash

## S&P US Aggregate Bond Index



## After a crash ... a surge in litigation

- Crash Case Taxonomy – 3 types
  - **Blame** or **direct involvement** with cause of crash
  - Concealed or misrepresented **exposure** to the downturn
  - Fraud is uncovered or **revealed** by downturn



*"It's only when the tide goes out that you learn who's been swimming naked."*

Warren Buffett, Letter To Shareholders, 1992

# Example of Great Recession *Blame* Case Countrywide Financial Corporation

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 WESTERN DIVISION  
16 ARGENT CLASSIC CONVERTIBLE  
17 ARBITRAGE FUND L.P., Individually  
18 and On Behalf of All Others Similarly  
Situating,  
19 Plaintiff,  
20 vs.  
21 COUNTRYWIDE FINANCIAL  
22 CORPORATION, ANGELO R.  
23 MOZILO, DAVID SAMBOL and ERIC  
24 P. SIERACKI,  
Defendants.  
25  
26  
27  
28

CV07-07097 GAF(Rx)  
Case No.

CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS  
AND CALIFORNIA STATE LAW  
JURY TRIAL DEMANDED

DOCKETED ON CM  
NOV - 5 2007  
BY [Signature] 032

803709v1/010471

Countrywide ... assured that they employed strict and selective loan underwriting and origination practices. ... Defendants' statements were materially false and misleading.

# Example of Great Recession *Exposure* Case American International Group, Inc.

Case 1:08-cv-04772-RJS Document 1 Filed 05/21/2008 Page 1 of 40

JUDGE SULLIVAN  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK CIV 47727

JACKSONVILLE POLICE AND FIRE  
PENSION FUND, on behalf of itself and  
all others similarly situated,  
Plaintiff,  
v.  
AMERICAN INTERNATIONAL  
GROUP, INC., MARTIN SULLIVAN,  
STEVEN BENSINGER, JOSEPH  
CASSANO and ROBERT LEWIS,  
Defendants.

Civil Action No. \_\_\_\_\_  
JURY TRIAL DEMANDED

RECEIVED  
MAY 21 2008  
U.S.D.C. S.D. N.Y.  
CASHIERS

U.S. DISTRICT COURT  
S.D.N.Y.  
MAY 21 10 51 AM '08  
RECEIVED

CLASS ACTION COMPLAINT

Plaintiff Jacksonville Police and Fire Pension Fund ("Plaintiff"), by its

Defendants repeatedly reassured investors that AIG's superior risk management and diversification had successfully **insulated** the Company from the turmoil that roiled the credit markets ... In truth, AIG hid or recklessly ignored ... mounting losses ... tied to the residential mortgage market.

# Example of Great Recession *Reveal* Case Las Vegas Sands

Case 2:10-cv-00765-KJD-LRL Document 2 Filed 05/24/10 Page 1 of 32

THE O'MARA LAW FIRM, P.C.  
WILLIAM O. O'MARA (Nevada Bar No. 0837)  
DAVID C. O'MARA (Nevada Bar No. 05899)  
311 East Liberty Street  
Reno, NV 89501  
Telephone: 775/323-1321  
775/323-4082 (fax)

Attorneys for Plaintiff

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

FRANK J. FOSBRE, JR., Individually and On )  
Behalf of All Others Similarly Situated, )  
Plaintiff, )

vs. )

LAS VEGAS SANDS CORP., SHELDON G. )  
ADELSON and WILLIAM P. WEIDNER, )  
Defendants. )

No.

CLASS ACTION

CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS

DEMAND FOR JURY TRIAL

Statements concerning Las Vegas Sands' business and operations were false and misleading because: (i) **increasing competition in Macau** was steadily eroding the Company's foothold in the region, ... (ii) the Company was facing a significant **liquidity crisis as a result of its ongoing expenditure of capital in Macau and Singapore**, which forced the Company to divert funds from other operations to develop its Asian properties; (iii) the Company could not, in fact, weather the economic downturn, because the credit markets were drying up and Las Vegas Sands had failed to timely access those markets; and (iv) **increasing visitor restrictions in Macau**, which Defendants represented would not impact the Company, were expected by Defendants to have a devastating effect on Las Vegas Sands.



## Example of a COVID *Direct Involvement* Case Inovio Pharmaceuticals, Inc.

Case 2:20-cv-01402-GJP Document 1 Filed 03/12/20 Page 5 of 18

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

PATRICK MCDERMID, individually and on behalf of all others similarly situated,  Plaintiff,  v.  INOVIO PHARMACEUTICALS, INC., and J. JOSEPH KIM,  Defendants.	Case No. _____  CLASS ACTION COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS  DEMAND FOR JURY TRIAL
--	--

Inovio made false and misleading statements claiming unequivocally that the Company had successfully developed a vaccine against the spread of COVID-19 and that it anticipated rapidly bringing that vaccine to market. ... Defendants knew and were deliberately reckless as to the falsity of their claims.

# Example of COVID *Direct Involvement* Case Norwegian Cruise Lines

Case 1:20-cv-21107-RNS Document 1 Entered on FLSD Docket 03/12/2020 Page 1 of 16

<b>UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA</b>	
ERIC DOUGLAS, Individually and on Behalf of All Others Similarly Situated,  Plaintiff,  vs.  NORWEGIAN CRUISE LINES, FRANK J. DEL RIO, and MARK A. KEMPA,  Defendants.	Case No.  <b>CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS</b>  <b>JURY TRIAL DEMANDED</b>

Defendants made false and/or misleading statements and/or failed to disclose that: (1) the Company was employing sales tactics of providing customers with unproven and/or blatantly false statements about COVID-19 to entice customers to purchase cruises, thus endangering the lives of both their customers and crew members; and (2) as a result, Defendants' statements regarding the Company's business and operations were false and misleading.

# Example of a COVID Crash *Reveal* Case RTI Surgical Holdings, Inc.

Case: 1:20-cv-01939 Document #: 1 Filed: 03/23/20 Page 1 of 19 PageID #:1

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

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PATRICIA LOWRY, individually and on  
behalf of all others similarly situated, )  
Plaintiff, )  
v. )  
RTI SURGICAL HOLDINGS, INC., )  
CAMILLE I. FARHAT, BRIAN K. )  
HUTCHISON, JONATHAN M. SINGER, )  
ROBERT P. JORDHEIM, and )  
JOHANNES W. LOUW, )  
Defendants. )

Case No:  
CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS  
JURY TRIAL DEMANDED

On March 16, 2020, RTI announced that it would file a Form 12b-25 with SEC due to its inability to timely file its Form 10-K for the fiscal year ended December 31, 2019. The Company disclosed that the cause of the delay was that its Audit Committee was investigating the Company’s revenue recognition practice.

# Example of COVID Crash *Reveal* Case Cronos Group Inc.

Case 1:20-cv-01310 Document 1 Filed 03/11/20 Page 1 of 21 PageID #: 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JILL WITTE, Individually and On Behalf of All Others Similarly Situated,	Case No.
Plaintiff,	<u>CLASS ACTION COMPLAINT</u>
v.	<u>JURY TRIAL DEMANDED</u>
CRONOS GROUP INC., MICHAEL GORENSTEIN, and JERRY F. BARBATO,	
Defendants.	

Defendants made false and/or misleading statements and/or failed to disclose that: (i) Cronos had engaged in significant transactions for which its revenue recognition was inappropriate;

## COVID Crash *Exposure* Cases

Division of Corporation Finance Securities and Exchange Commission

# Coronavirus (COVID-19)

Division of Corporation Finance  
Securities and Exchange Commission

CF Disclosure Guidance: Topic No. 9

Date: March 25, 2020

**Summary:** This guidance provides the Division of Corporation Finance's current views regarding disclosure and other securities law obligations that companies should consider with respect to the coronavirus disease 2019 (COVID-19) and related business and market disruptions.

# COVID Crash *Exposure* Cases

## Division of Corporation Finance Securities and Exchange Commission

4/2/2020

SEC.gov | Coronavirus (COVID-19)

business section, risk factors, legal proceedings, disclosure controls and procedures, internal control over financial reporting, and the financial statements.

### Assessing and Disclosing the Evolving Impact of COVID-19

Assessing the evolving effects of COVID-19 and related risks will be a facts and circumstances analysis. Disclosure about these risks and effects, including how the company and management are responding to them, should be specific to a company's situation. As companies assess COVID-19-related effects and consider their disclosure obligations, questions to consider with respect to their present and future operations include:

- How has COVID-19 impacted your financial condition and results of operations? In light of changing trends and the overall economic outlook, how do you expect COVID-19 to impact your future operating results and near-and-long-term financial condition? Do you expect that COVID-19 will impact future operations differently than how it affected the current period?
- How has COVID-19 impacted your capital and financial resources, including your overall liquidity position and outlook? Has your cost of or access to capital and funding sources, such as revolving credit facilities or other sources changed, or is it reasonably likely to change? Have your sources or uses of cash otherwise been materially impacted? Is there a material uncertainty about your ongoing ability to meet the covenants of your credit agreements? If a material liquidity deficiency has been identified, what course of action has the company taken or proposed to take to remedy the deficiency? Consider the requirement to disclose known trends and uncertainties as it relates to your ability to service your debt or other financial obligations, access the debt markets, including commercial paper or other short-term financing arrangements, maturity mismatches between borrowing sources and the assets funded by those sources, changes in terms requested by counterparties, changes in the valuation of collateral, and counterparty or customer risk.<sup>[3]</sup> Do you expect to disclose or incur any material COVID-19-related contingencies?
- How do you expect COVID-19 to affect assets on your balance sheet and your ability to timely account for those assets? For example, will there be significant changes in judgments in determining the fair-value of assets measured in accordance with U.S. GAAP or IFRS?
- Do you anticipate any material impairments (e.g., with respect to goodwill, intangible assets, long-lived assets, right of use assets, investment securities), increases in allowances for credit losses, restructuring charges, other expenses, or changes in accounting judgments that have had or are reasonably likely to have a material impact on your financial statements?
- Have COVID-19-related circumstances such as remote work arrangements adversely affected your ability to maintain operations, including financial reporting systems, internal control over financial reporting and disclosure controls and procedures? If so, what changes in your controls have occurred during the current period that materially affect or are reasonably likely to materially affect your internal control over financial reporting? What challenges do you anticipate in your ability to maintain these systems and controls?
- Have you experienced challenges in implementing your business continuity plans or do you foresee requiring material expenditures to do so? Do you face any material resource constraints in implementing these plans?
- Do you expect COVID-19 to materially affect the demand for your products or services?
- Do you anticipate a material adverse impact of COVID-19 on your supply chain or the methods used to distribute your products or services? Do you expect the anticipated impact of COVID-19 to materially change the relationship between costs and revenues?
- Will your operations be materially impacted by any constraints or other impacts on your human capital resources and productivity?
- Are travel restrictions and border closures expected to have a material impact on your ability to operate and achieve your business goals?

“Assessing the evolving effects of COVID-19 and related risks will be a facts and circumstances analysis. Disclosure about these risks and effects, including how the company and management are responding to them, should be specific to a company’s situation. As companies assess COVID-19-related effects and consider their disclosure obligations, questions to consider with respect to their present and future operations include:”

“How has COVID-19 impacted your capital and financial resources, including your overall liquidity position and outlook?”

“How do you expect COVID-19 to affect assets on your balance sheet and your ability to timely account for those assets?”

“Do you expect COVID-19 to materially affect demand for your products or services?”

“Are travel restrictions and border closures expected to have a material impact on your ability to operate and achieve your business goals?”



## COVID Crash *Exposure* Cases

### SEC “roadmap” of disclosures:

- If companies abide and disclose, they will avoid exposure case litigation.
- If they try to conceal, they will get into trouble.
- Time will tell.

### Lesson from 2008 and BP

- What companies disclose will determine if/what litigation ensues.



## After a crash ... a surge in litigation

- Other kinds of cases:
  - ERISA
  - Insider trading
  - Mismanagement, Fiduciary responsibility, Derivative cases
  - Insurance (covered or excluded)
  - Bankruptcies
  - Misconduct, e.g. price gouging or improper foreclosures
  - Busted deals (M&A, real estate, covered/uncovered adverse event)
    - *Who was supposed to bear the risk?*
  - Turn to courts to sort out all kinds of ambiguities and uncertainties

## **Financial Analysis and Econometrics in Securities Litigation**

### **In Section 10b-5 cases:**

Plaintiffs have to prove:

1. Information moves the security price
2. The price was inflated by the misrepresentations and omissions
3. Corrective disclosure caused the price to fall
4. Investors suffered loss as a result

### **In Section 11 and 12 cases:**

The burden of proof is reversed.

Defendants have to prove how much loss was not caused by the misrepresentations.

## The Finance Expert's Arsenal



Event Studies



Financial Economic  
Principles



Valuation Tools

(not exhaustive)

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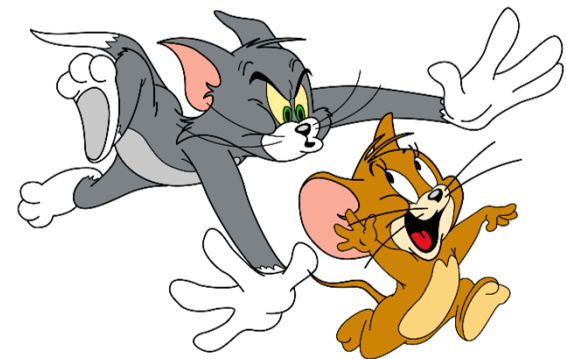
## Evasion Tactics

*Because corporations and their advisors know what plaintiffs must prove in a fraud suit, they are aware of tactics that can be used to avoid or evade a lawsuit.*

*Because plaintiffs' forensic experts know corporation's tactics, they develop analyses to thwart those tactics.*

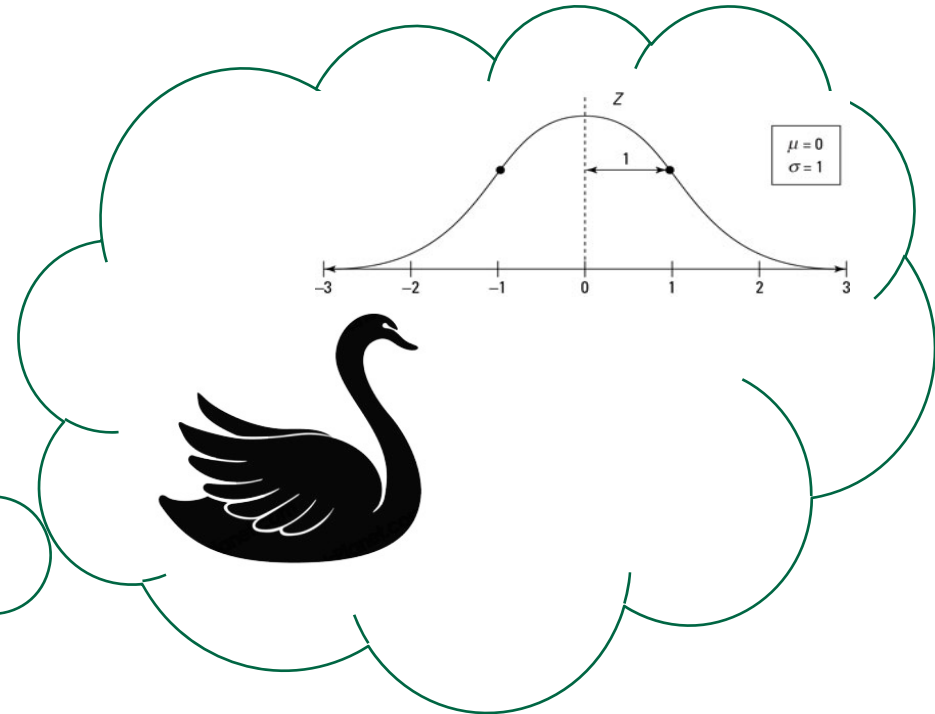
*Because corporations and their advisors know how plaintiffs thwart evasion tactics ... etc., etc., etc.*

- #1: Don't commit fraud. Disclose honestly.
- Trickle out – disclosure spread out over several non-stat-sig events
- Third party disclosures – lessen impact
- Countervailing confounding announcements
- Kitchen sink – combine fraud and non-fraud negative disclosures
- Hide fraud disclosure among bigger news (e.g. COVID crash)
  - Cronos? RTI?



## Fundamental Research and Securities Litigation

- Tail events
- Return modeling
- R-squared
- High volatility environment





# French Laundry Partners LP vs. Hartford Insurance

..  
12 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
13 COUNTY OF NAPA  
14 French Laundry Partners, LP dba The  
15 French Laundry, a limited partnership;  
16 KRM, Inc. dba Thomas Keller Restaurant  
17 Group, a Corporation; Yountville Food  
18 Emporium, LLC dba Bouchon Bistro, a  
19 limited liability company,  
20 Plaintiffs,  
21 vs.  
22 HARTFORD FIRE INSURANCE  
23 COMPANY, a corporation; TRUMBULL  
24 INSURANCE COMPANY, a corporation;  
25 KAREN RELUCIO, an individual, and;  
26 DOES 1 to 25, inclusive,  
27 Defendants.

CASE NO.  
COMPLAINT FOR DECLARATORY RELIEF

“The Insured Properties include two different prominent restaurants located in Napa Valley County, The French Laundry and Bouchon Bistro, which are owned, leased by, managed, and/or controlled by the plaintiffs.”

“The virus is physically impacting public and private property, and physical spaces in cities around the world and the United States. Any effort by the HARTFORD DEFENDANTS to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders and the public.”

# Burr Insider Trading Case

Case 1:20-cv-00799 Document 1 Filed 03/23/20 Page 1 of 16

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ALAN D. JACOBSON,  
*Plaintiff,*

v.

RICHARD M. BURR,  
*Defendant.*

Civil Action No. \_\_\_\_\_

“... Senator Burr possessed material nonpublic information regarding the impact of COVID-19 on the United States, and in particular on the U.S. stock market. Senator Burr learned this material nonpublic information by virtue of his duties as a United States Senator. Senator Burr owed a duty to Congress, the United States government, and citizens of the United States, including Plaintiff, not to use material nonpublic information that he learned by virtue of his duties as a United States Senator in connection with the sale or purchase of any security. Senator Burr breached that duty by selling stock, including Wyndham stock, based on that material nonpublic information.”

**Alan D. Jacobson v. Richard M. Burr, Case No. 1:20-cv-00799, District Of Columbia, filed 23 March 2020, ¶31.**