

Second, because this Court bifurcated issues of individual reliance and damages for proceedings following the trial of class-wide issues of falsity, materiality, scienter and loss causation, to date there has been no discovery, trial or jury verdict on these open, contestable issues. Nothing in *Schleicher* (which focused on class certification procedures and expressly distinguished the merits phase of an action) deprives Defendants of their due process right to litigate these essential elements. *See generally* Defendants' Recommendations For Phase Two Proceedings, If Needed (Dkt. 1623) at 7-9, 15-16; Defendants' Response to Plaintiffs' Post-Verdict Submission (Dkt. 1630) at 2-4.

Third, the Court of Appeals acknowledged "[t]he possibility that individual hearings will be required for some plaintiffs to establish damages". Slip Op. at 11. This seems particularly likely in this action, given the novel complications arising from Professor Fischel's admission that his leakage model charted price changes unrelated to fraud (contrary to the standard model of proof cited in Judge Easterbrook's hypothetical), and the jury's adoption of inflation numbers *dehors* the record. *See* Defendants' Recommendations For Phase Two Proceedings, If Needed (Dkt. 1623) at 6. Contrary to Plaintiffs' assertion, resolution of such issues is by no means "a mechanical function appropriately handled by the claims administrator," which is why Defendants believe their Rule 50(b) and 59 motions should be resolved on the merits prior to addressing the contours of Phase II and continue to urge the Court to resolve these anomalies in one way or another prior to the start of Phase II in order to minimize or avoid undue burden on class members, the parties and the Court.

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Respectfully submitted,

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