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We are pleased to present the fifteenth edition of the Bernstein Shur Business and Commercial Litigation Newsletter. This month, we highlight news and links related to securities law developments, as well as other articles that will have an impact on business and commerce. We hope you enjoy the newsletter.

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In the News:

A federal appeals court states that there is a "strong likelihood" that U.S. District Court Judge Jed Rakoff erred when he rejected a proposed $285 million settlement between the SEC and Citigroup, Inc. Judge Rakoff rejected the proposed settlement of securities fraud claims based in part on the SEC's practice of settling cases without requiring any admission of wrongdoing and based on general policy concerns. The U.S. Court of Appeals for the Second Circuit granted a motion to stay trial proceedings, stating that the "SEC and Citigroup have made a strong showing of likelihood of success" to obtain reversal of Judge Rakoff's decision. In particular, the Second Circuit noted that there was "no reason to doubt" the SEC's determination that the proposed settlement was in the public interest, while also emphasizing the existing practice of deference to executive agencies in similar contexts. Learn more about this development or read the Second Circuit's opinion here.

The Court of Appeals for the Third Circuit upholds the validity of employment agreements that require employees to arbitrate their disputes rather than pursue such claims in court through class actions. In this case, employees of Tenet Healthcare Corp. asserted claims in a class action alleging that allegations that they were denied pay for work performed during meal breaks. Tenet Healthcare moved to compel arbitration of the disputes, citing provisions contained the claimants' employment agreements. At the trial court level, Tenet Healthcare's request for arbitration was denied based on the court's view that the agreement waiving class action claims may be unconscionable. On appeal, the Third Circuit rejected the trial court's determination, holding that the employment agreements were valid and effective, and required that the employees arbitrate their claims on an individual basis. The decision comes in the wake of the U.S. Supreme Court's decision in *AT&T Mobility v. Concepcion*, in which the High Court struck down a California law that prohibited class action waivers in customer agreements, holding that the Federal Arbitration Act trumped state law. Read more about the case here.

Irving Picard, the trustee seeking to recover money for victims of Bernard Madoff, the Ponzi-scheme operator, has settled claims against the owners of the New York Mets. At issue in the case was the trustee's attempt to recover more than $300 million from defendants, including $162 million in fictitious profits received from Madoff investments. Prior to settlement, the parties battled over the trustee's ability to prove bad faith or willful blindness needed for recovery of the full amount claimed by the trustee. Under the settlement, defendants will return $162 million in fictitious profits to the trustee and will assign to the trustee certain claims against the Madoff estate. Any recovery by the trustee on those claims will be used to offset amounts owed by the defendants under the settlement. Read the bloomberg.com article.