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Speaker 1 (00:00):

The next case on the calendar is Pearlstein v Blackberry Limited.

David Brower (00:07):

Good morning, Your Honors. David Brower for the appellants. The core of this appeal is the proper application of Federal Rule of Appellate Procedure 3C3. Judge McMahon in her dismissal order, which is at the special appendix starting at page 29, indicated that in the circumstances of this case, which is a PSLRA securities case, there was no second circuit guidance on how to apply Federal Rule of Appellate Procedure 3C3 with respect to additional named plaintiffs in addition to the lead plaintiffs that had been appointed by the court. What the statute says, is in a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class. Judge McMahon then found that the only qualified person to bring an appeal in a PSLRA case on behalf of the class is the court appointed lead plaintiff. That has not been disputed by any party in this litigation. There was also no issue that Messrs. Cho and Ulug, sorry, who are the appellants, were members of the class. Judge McMahon found that as well. As a result, Judge McMahon said that should have ended the inquiry, and the appellant's claims should have been sustained. That's where things went off the tracks. Judge McMahon then looked at footnote three in *Cohen vs UBS* and determined that based on the language in the footnote, which is somewhat cryptic and which she described as “the salient language about the appellate rule peers and the footnote, the reader has no idea how or why the issue was raised, or whether the statement in the footnote itself, is a slender read on which to hang the disposition of a case is anything other than dictum finding that the *Cohen* case itself was very confusing decision in all respects.” At that point, Your Honors, I think the lesson of *Cohen*, as we'll demonstrate, is that Appellants should not make half-baked, new arguments for the first and only time during oral argument, which is the reason we provided the court with the audio tape of the oral argument, which actually fills in all the gaps. In what happened in *Cohen*, it is not explained either the text of the opinion or footnote three that Judge McMahon concluded she was bound by that it indicated a narrow reading of Federal Rule of Appellate Procedure 3C3, and that in fact, that reading under *Cohen* the way she read *Cohen* created a split in the circuits between at least the second and third circuits on how to apply it in a class action.

Judge Lynch (03:14):

Mr. Brower, could I ask, this is Judge Lynch, could I ask a question about the status of Cho, and we'll look in this case? What, if anything, do they gain by remaining in the case as named parties that they would not have had as class members?

David Brower (03:35):

Well, two, two answers to that question, Your Honor. First of all, it is, it is very common practice, and in fact was endorsed by this circuit in the [**inaudible**] case, to add additional plaintiffs to a complaint in case something goes wrong with their names, lead plaintiffs, and the class is jeopardized by not getting class certification. So, it's often the case that additional plaintiffs are added to a class action consolidated complaint by the lead plaintiff.

Judge Lynch (04:04):

I understand that. I'm trying to ask what they get. In other words, let me make it more concrete. Suppose the lead plaintiffs had decided not to appeal this dismissal on behalf of the class. So, I suppose they read the district court's dismissal opinion and said, that's fine with us. It's not worth our time to pursue this. Could Cho and Ulug have appealed in their own right as individual plaintiffs?

David Brower (04:31):

I, I—they could have done that, but more importantly, I believe as the statute is written, since the class has not yet been certified, they could appeal on behalf of the entire class, because at that point, the lead plaintiffs would have abandoned the class, and the class is entitled to protection, even if the lead plaintiffs choose not to protect the class.

Judge Lynch (04:53):

So well, suppose they didn't though. Excuse me, suppose they just decided to go ahead on their own. They have pretty substantial damages as I understand it. I suppose they could have done that. Couldn't they?

David Brower (05:03):

If the case was dismissed?

Judge Lynch (05:07):

Yeah.

David Brower (05:07):

No, no, because there are named plaintiffs. Have they not ever become named plaintiffs?

Judge Lynch (05:13):

No, exactly. I'm asking first as named plaintiffs, didn't they have certain rights? For example, if Cox and Dinzik did appeal just as they did and Cho and Ulug said, “We don't think the brief that they wrote is very good. We have some additional arguments we'd like to make.” Would they not have been entitled to file their own notice of appeal and their own brief in the case?

David Brower (05:41):

The answer is they could probably have filed an Amicus brief. They would not have been able to represent the class.

Judge Lynch (05:47):

I'm not asking about representing the class. They are individual plaintiffs. Right? There are lots of other members of the class you know. Joan, Mr. Jones is also someone who owns stock. I don't remember what the case is, the underlying case about the moment, someone else was a member of the class could not have jumped into the case without intervening.

David Brower (06:09):

Correct.

Judge Lynch (06:10):

And making a motion to intervene, but Cho and Ulug could pursue their own course if they chose to.

David Brower (06:17):

Yes.

Judge Lynch (06:18):

So then what I'm, what I'm puzzled about is they're not like just members of the class who ride on the coattails of Cox and Dinzik in this case. Aren't they entitled to go their own way?

David Brower (06:35):

Well, no, no, your honor, because they're consolidated and under the lead plaintiff provisions, they're supposed to be guided by the lead plaintiffs. Now, there's a 10th circuit case. I forget the name of it, David's store, I believe is David's stores—it's a supermarket case from the nineties—where the court said that if a lead—if a named plaintiff was part of a class action where they're not the lead plaintiff has an interest that suddenly diverges from the lead plaintiffs, they're entitled to raise that issue with the court. So presumably that would be the rule everywhere. That's a 10th circuit case. That would presumably be the rule everywhere, but here that didn't happen. What's most important is it didn't happen. These, these two plaintiffs had identical claims, were added to the complaint by the lead plaintiffs as a security measure, and I might add under *CalPERS versus ANZ*, the court, the Supreme court recently said, that's what you have to do in order to preserve your rights, for classes not certified later on, or you wish to opt out later on when the time comes to opt-out because otherwise you could pass the statute of repose. Here, we've way passed the statute of repose. So no member of the class can start their own case anymore, and if class is denied, for instance, the case is over as to the entire class, unless you actually entered an appearance as a named plaintiff. So, there were two reasons to do the two named plaintiffs had to do it. As to the *Cohen* case, I know I'm running out of time, as to the *Cohen* case, we've laid out what happened to *Cohen*. *Cohen* tries to represent a class of people with a claim he didn't have. He admitted he didn't have the PAGA claim—the California state court claim. As a result, he could not have been a qualified representative of a class for the PAGA claim and that's the meaning of the footnote. The only way you can ferret that out though, is listening to Judge Carney's questioning of Cohen's lawyer, where it became clear Cohen's lawyer didn't even know if Mr. Shoemaker, the plaintiff below who didn't appeal, who did have the PAGA claim, was even a member of Mr. Cohen's class. He had no idea. So the problem there was, you didn't have a plaintiff with standing to assert the claim and therefore be qualified to assert the claim in the notice of appeal. Here there's no question. The lead plaintiffs and Mr. Ulug and Cho have exactly the same claims. They didn't do anything differently. They've taken no different positions, and in fact, Cho and Ulug have always been advocates for the class and in fact, moved to be certified as class representatives.

Speaker 2 (09:18):

I mean the Cohen court, just to make sure I understand, I think I do understand it, but just to make sure, the Cohen court necessarily found that Cohen was qualified to bring the appeal as a representative of the class, right? That's that they, they undertook the appeal. You're saying that there's, there has to be a claim by claim assessment to qualification under this rule, and that's how we should construe the sentence.

David Brower (09:43):

But what happened in *Cohen*, what happened in *Cohen* is very clear. There were two sets of claims. There was a federal physical claim, and there was this California PAGA claim. Mr. Cohen had problems with the physical claim, because there was a mandatory arbitration clause that he was trying to fight. He had standing to litigate that case, except there was a mandatory arbitration claim so he couldn't pursue the claim in court. So it was dismissed, and he appealed that. He also appealed the PAGA claim, which did not have the mandatory arbitration claim, and at oral argument, he said, well, he's represented. He doesn't have that claim himself, but Mr. Shoemaker who was a plaintiff below who didn't appeal, he has that claim. So by bringing this as a class notice of appeal, I, he has appeal. And the court said, "No, no, no. Someone who's qualified to represent the class for that claim has to appeal." While Mr. Cohen used the magic language of on behalf of all of those similarly situated correctly, he didn't have the claim, and that's why the court then said, "We don't even have jurisdiction to consider the merits of Mr. Cohen's arguments about the PAGA claim because Mr. Cohen doesn't have the PAGA claims." That's what happened, and the court basically said in *Cohen*, you have to look to see if the person seeking to represent the class is qualified to do so. Mr. Cohen was not because he didn't have the only live claim that could have been appealed.

Judge Lynch (11:14):

And Mr. Brower, may I ask one more question? Do you see any distinction between the status of Cho and Ulug as individual named plaintiffs and their status as members of the class in the following way? Is it possible that—you gave some indication of why they want to be named plaintiffs in this case—so that for example, they would preserve their opt-out rights and preserve their right to file an individual complaint if the class is not certified. Is it possible that they lose that by not appealing in their own names, but could still be participants in the class action because the rule that you cite, after all, says that the Cox and Dinzik, and it can bring this appeal as qualified lead plaintiffs on behalf of the entire class and Cho and Ulug are, whatever else they are, also members of the putative class. So that if the class goes forward and either wins a trial, if any of these things ever go to trial, or there's a settlement in which class members can put in their claims, perhaps the appeal worked on behalf of Cho and Ulug as class members, but not necessarily in so far as they have individual separate rights?

David Brower (12:40):

Okay. I think the answer, Judge Lynch, goes back to something a little more basic. You—in order to be a class member, you needed to have a claim that's common to the other members of the class. And either they have the claim or they don't. The defendants and the court took the position their claims were extinguished because they didn't individually, they weren't individually named in the notice of appeal. So they don't, as of now, they don't have the claim. That's what this appeal is about.

Judge Lynch (13:10):

I understand that. I understand that. But I'm, I'm asking you about something else that may be relevant here as we try to parse out these, these different rules and precedents. There's, there's a point to their being named in the complaint, and they get certain rights that the other class members don't have, and what I'm asking you is do they need to file their own appeal in order to preserve those rights? Assume, we agree with you that they can't be precluded from filing a claim if the class succeeds based on the efforts of the leader plaintiffs.

David Brower (13:44):

They, they, they are in no different position than any other member of the class. The statute, rule 23, would allow any member of the class to intervene and seek to be a class representative if they, if they wish to. I think it'd be difficult, but they, they go back to their status, first and foremost, as class members who are under the control of the lead plaintiffs, who the courts appointed to run the case. As to this idea about opting out, I, I want to say one moment to that; the, the defendants have argued and the court seemed to agree, and I'm not sure where the law came from on this, that by virtue of being a named plaintiff, you have somehow effectively opt out of the class. We submit, and we cited a ton of cases on pages 31, 35 of our opening brief that there were a ton of cases that make it very clear, as a matter of law, you cannot opt out of a class, whether you're a named plaintiff, or do you have your own lawsuit and other venue, whether you have a lawsuit in the same venue, you cannot opt out of a class until under Rule 23-C-2-B-5 and 6. The court orders an opt-out the no—that the class first gets certified, the court orders a notice informing people how and when, and to properly opt out, and then it becomes a formal opt-out. This has been held in, in unbroken line of cases in the Southern district of New York, going back to the Grinnell case. It's the underlying reasoning of *CalPERS vs. ANZ* where, where the plaintiffs, you know, wanted to opt out, but couldn't because the class has yet to be certified and couldn't go with their own way. That's not the law. The law is, you're a member of the class until the court certifies class, and then allows you and tells you how, and if it was any other way around it, it would just undermined the PSLRA completely turn it on, on the control portions of it on its head, and it would ruin the orderly management of class actions by the courts, because anybody could just start filing cases all over the country and just take the position, “I'm not a member of the class. So, I'm going to pursue satellite litigation everywhere simultaneously.”

Speaker 2 (16:05):

Now Mr. Brower, did you want to reserve your rebuttal time or use it now?

David Brower (16:08):

Thank you, your honor.

Speaker 2 (16:10):

Thank you. We'll hear from Mr. Palmore.

Joseph Palmore (16:14):

Thank you, Your Honor. Joseph Palmore here on behalf of Appellees. The district court correctly held that the prior judgment dismissing Cho and Ulug’s individual claims barred Cho and Ulug from continuing to litigate them. Cho and Ulug appeared nowhere on the previous notice of appeal and under this court's decision in *Cohen*, that is dispositive. They did not appeal the judgment against them. It is therefore final and has res judicata effect as to them. As *Cohen* also expressly holds, the fact that this is

a putative class action did not relieve Cho and Ulug of the obligation to appeal dismissal of their individual claims. I explains that Rule 3C3 means that Cox and Dinzik's appeal covered unnamed putative class members, but not other named plaintiffs with a judgment against them individually. The new claim against Mr. Zipperstein is also barred by res judicata and law of the case.

Joseph Palmore (17:12):

I think it's important to recognize that Cho and Ulug had a choice at the outset of this case. They wanted to be lead plaintiffs. They were unsuccessful in that. They could have, at that point, receded back into the putative unnamed class and a number of other people who wanted to be lead plaintiff did exactly that, but instead they chose a different route. They chose, as was their right, to file their own individual claims and to represent themselves, and they did that, as Mr. Brower explained, because it benefited them. They were able to avoid a potential statute of repose problem by pursuing those individual claims. Having made that choice and accepting the benefits of that choice along with it came certain obligations. After judgment was entered against them as individuals, as it was, one of those obligations was to appeal that judgment if they wanted to prevent it from having res judicata effect. They didn't do that.

Joseph Palmore (18:10):

And as *Cohen* explains, that is fatal to their ability to that, to continue with those claims because they were not parties to the previous judgment, the previous judgment of this court. And *Cohen* is not, there's no mystery about Cohen's holding. It explains why it held what it did. It's not just a footnote. It's also section three of the opinion, and it said that *Cohen*, there were basically *Cohen* was litigating on that appeal as an individual and as a representative of the unnamed class members, and he did, he himself didn't have this California PAGA claim, and the court said that Shoemaker, the only party who did have that claim was quote, "has not joined this appeal." Accordingly, we lack jurisdiction to consider any appellate argument he may have. Shoemaker had chosen, like Cho and Ulug to litigate his claim as an individual, and he did not become an appellant in this court because he didn't join the notice of appeal that was filed only by Cohen.

Joseph Palmore (19:18):

This was a holding because it was necessary for the, to the court's decision, not to decide upon their question, and it was briefed too. It didn't just pop up for the first time at oral argument. It was in this very issue was teed up in the party's briefs in *Cohen*. I think Judge Lynch's questions highlight, I think, the fundamental distinction between what it means to be an individual plaintiff litigating an individual claim and being an unnamed class member. Imagine there'd been no appeal after the, after the district court dismissal in this case, the first district court dismissal. After that, unnamed putative class members could have gone into court the next day and sued. They wouldn't have been bound by that judgment. But Cox, Dinzik, Cho and Ulug would have, because there would have been a judgment with preclusive effect barring their individual claims.

Joseph Palmore (20:13):

Relatedly, if, as Judge Lynch pointed out, Cho and Ulug had chosen to appeal and, and Cox and Dinzik had chosen not to, then Cho and Ulug's individual claims could have survived if they were successful on appeal, but Cox and Dinzik's would not have. And the converse, which is this case, is also true; Cox and Dinzik decided to appeal the dismissal of their individual claims, but Cho and Ulug didn't. And as this court's decision in *Cohen* explains that reflects the fundamental distinction between named plaintiffs

who choose to litigate their individual claims, and then end up with a judgment against those individual claims and unnamed putative class members.

Speaker 2 (20:59):

Now, the district court thought that we—that following our decision in *Cohen*, we are in conflict with the third circuit in *Massey*. Do you agree with that?

Joseph Palmore (21:12):

I don't. I think *Massey* is actually entirely consistent with our approach here because *Massey* looked at this question in two different steps. The first question was, were the other named plaintiffs other than Massey before the court. And for that this court, that third circuit, I'm sorry, look to Rule 3C1A and in particular, it looked to the use of, et all, and said that was enough to bring in the other named plaintiffs. I'll just note parenthetically, there's no et all here. Then separately, the court in Massey looked to 3C3 to see whether that appeal was sufficient to bring in the other unnamed putative class members, and that's, that's the same analysis here. The same analysis that this court applied in, in *Cohen*. The big issue here is individual named plaintiffs. So it is a 3C1A question, and this court reads that in connection with 3C4, and it requires there has to be affirmative evidence. It has to be clear that the party in question intended to appeal. And here, when you look at the notice of appeal, it's not just that Cho and Ulug weren't mentioned, there's affirmative evidence that they didn't intend to appeal, although that's not actually necessary. And this is a JA1-19 to 1-20, the notice of appeal, not only are Cho and Ulug not mentioned, but Mr. Brower appeared in his signature block as additional counsel for lead plaintiffs and the class. That is important and significant because in the context of this case, he had typically appeared in the district court as counsel for additional plaintiffs Cho and Ulug. So it was a conspicuous change, which is actually affirmative evidence of Cho and Ulug's not having joined the appeal. And I'd also like to point out that there's no trap for the unwary here. It's a basic rule of appellate jurisdiction and appellate practice that I would use with a judgment against them, have to note an appeal.

Judge Lynch (23:34):

Yeah, excuse me, Mr. Palmore, Cho and Ulug seemed to have been very unwary in their depositions. It seems that they didn't even know that the complaint had been dismissed, let alone that they had a choice to make about whether to appeal or not to appeal was, am I wrong about that?

Joseph Palmore (23:50):

You're absolutely right about that. They had no idea that, that their, their claims had been dismissed. They had no idea there was an appeal. They didn't know about it until years later, before a deposition and that's consistent.

Judge Lynch (24:01):

And their complaints, their original complaints when they were filing their own class actions indicated or alleged that between the two of them, they lost about a hundred thousand dollars. And so if they were able to continue in this case, even as class members, you know, either your side wins this case on summary judgment or likely there will be some settlement and the settlement will be in some gross amount for all of the shareholders. And then individuals will put in their claims and get their pro rata share of whatever the case settles for, except for these people, who will be out of luck. So let me ask again, the question that I asked Mr. Brower, do you see any distinction between their abilities, and their need to appeal separately and their rights as individual named plaintiffs and their rights to continue to

participate as class members, in a situation where Rule 3 does seem to say that so long as one person appeals, who has, the right to represent the class or claims typically of the class, that's good for everybody in the class.

Joseph Palmore (25:20):

Uh I, I actually, I understand Your Honor's question. I don't see a distinction because before certification parties are completely authorized to litigate on their own behalf. They are the master of their own individual claims. They can settle them. They can abandon them. So, you could imagine in this case, if you know, defendants had decided to settle with Cho and Ulug, and Cho and Ulug had signed a release, they would then not be members of a class if one were ever certified, and they wouldn't be entitled to enjoy any class judgment or class settlement.

Judge Lynch (25:54):

So you're saying we should treat this essentially the same as if for some strange reason, I'm not sure. I've never seen this happen. If Judge McMahon had consolidated all the other class actions into a Cox and Dinzik lead plaintiff complaint and allowed Cho and Ulug to proceed with their own separate complaint. And then they did not appeal a judgment, which applied to both their case and the punitive class case. That would be that that's essentially what happened here, you're saying.

Joseph Palmore (26:27):

Yes, that is what happened here. Their individual claims were extinguished when judgment was entered against them, and then they failed to appeal and that would bar them from enjoying, enjoying the benefits of a class settlement or judgment down the road. Of course, that, that second issue isn't actually before the court right now, and no class has even been certified here—

Judge Lynch (26:48):

But we'd have to say one way or the other, right. Whether what it is that they lose or what, what happened to them by not appealing.

Joseph Palmore (26:57):

Well, and I think what you would say, if you do go there is that their claims were extinguished. In the same way, they would have been extinguished if they had settled, and this court that in *Weight Watchers* and other cases that before certification, individual plaintiffs are welcome and allowed to settle their claims with defendants. They would, then they exited the class by their conduct. And the same situation is here by analogy, which is that they, they abandoned their claims when judgment was entered against them and they didn't appeal. And I would finally just point out as a practical matter. There is no trap for the unwary. As we note in footnote nine of our brief, it's quite common in securities litigation like this, when there are additional named plaintiffs, for them to either file their own notices of appeal or join in by name, the notice of appeal filed by lead plaintiffs. That's a common practice in the plaintiff's security bar. It wasn't done here, and that has jurisdictional significance. And it means that the portion of the judgment dismissing Cho and Ulug's individual claims is now final. And it's has raised res judicata effect, not only with respect to the claims against Blackberry and the original set of defendants, but with respect to Mr. Zipperstein, who was obviously in privity with Blackberry. He was a senior official. He was the chief legal officer and that means that the res judicata effect of the original judgment extends to him. Law of the case gets you to the same place, because there is a now final and unreviewable judgment in the district court. As to Cho and Ulug, that there was, there were no

adequately alleged false statements by Mr. Zipperstein and that there was no adequate allegation of [**inaudible**], attributed to Mr. Zipperstein. And so law of the case would also bar their attempt to assert new claims on remand against Mr. Zipperstein. So for all these reasons—

Speaker 2 (29:02):

Thank you, Mr. Go ahead and finish your, you were closing up. Sorry, I interrupted.

Joseph Palmore (29:09):

No, no problem. I was just about to wrap up and, and say that I think basic principles of res judicata law and appellate jurisdiction, this court's decision in Cohen reflecting a plain reading of Rule 3C requires a affirmance in this case. Thank you, Your Honor.

Speaker 2 (29:29):

We'll hear rebuttal.

David Brower (29:29):

Your Honor. First of all, with respect to Mr. Zipperstein, I'm very confused by counsel's argument. Mr. Zipperstein was named for the first and only time in the second amended complaint after this court remanded the case back to Judge [**inaudible**], finding that new evidence had been uncovered and the court should have considered allowing amendment of the complaint. And that motion was joined in by Mr. Cho and Ulug, there's no dispute. They joined in that motion. That's in the papers. That was a new claim. When they went back, Mr. Zipperstein, who was then named for the first and only time, tried to get it dismissed based on statute of limitations.

David Brower (30:09):

And the court found under *Reynolds vs. Merck* that the information upon which the fraud was premised, his scienter, in particular, was not, could not have been found within the two years after the initial complaint was filed. So, I don't know what he's talking about. Some judgment as to Mr. Zipperstein. Mr. Zipperstein is not named in his agency capacity, which is what all of the cases that they've cited talk about. Mr. Zipperstein is named as a primary violator of section 10B of the Exchange act. Unlike the other two named defendants who were named under section 20 as control people, Mr. Zipperstein is not, he's named. They could have filed a completely new action against Mr. Zipperstein anywhere in the country after the case was sent back to Judge [**inaudible**], because it was irrelevant, whether or not the initial dismissal was, was reversed or not.

David Brower (31:07):

It was reversed. But whether it wasn't, wasn't, it was a new case, a timely case against Mr. Zipperstein who not being named in his agency capacity. So, that claim should be sent back and remanded. My colleague, when he read you the portion in section three of *Cohen*, left a little piece of that out. What the court said was, since Cohen concedes his claim under PAGA are untimely, we need not decide whether the doctrine of California law was consistent with the FAA. Cohen asserts that one of the plaintiffs below, Charles Shoemaker, has timely PAGA claims, but Shoemaker has not joined with this appeal. Accordingly, we lacked jurisdiction to consider any appellate arguments you may have. The issue there is very clear. They split the claims and found he was not a qualified representative of the PAGA claims. And that's the meaning of the footnote. Not that Mr.—

Judge Lynch (32:05):

Isn't, isn't the logic—wouldn't the logic that you're advancing suggest that the Shoemaker was present in the appeal. I guess you were saying, he isn't present in the appeal because Cohen couldn't bring the appeal on his behalf, which is not true here? That's the distinction?

David Brower (32:21):

That's the distinction.

Judge Lynch (32:23):

Okay. I understand your point. Sorry to interrupt.

David Brower (32:25):

Mr. Cohen didn't have a claim that he would be qualified to represent. Whereas here there was no question, the lead plaintiffs had exactly the same claim and were qualified to represent those claims on behalf of Ulug and Cho. I'll note that the defendants haven't cited a single case in support of any of their positions, which is telling because the statute is so clear on its face. The argument about et al, I find to be one of the more absurd, because *Cohen* does make clear that the, the phrase on behalf of all other similarly situated. is the appropriate magic language, if, of course, Mr. Cohen had had the claim on behalf of the people he was trying to represent. It was similarly situated, which he did not the PAGA claim, but clearly using on behalf of all as similarly situated is not only as good as using et al which the advisory committee talks about, but it's better. And, and it's been endorsed by this court. With respect to the change in my status from counsel for additional plaintiffs, traveling new law to representing, I was additional counsel for the lead plaintiffs. In fact, you may remember judge, I argued the appeal the Blackberry appeal before the second circuit. The reason was because only the lead plaintiffs could appeal on behalf of the class for the claims the class was asserting. So only they could be represented during the oral argument on behalf of the entire class of which Ulug and Cho were indubitably. as Judge McMahon said, members. If the court has—

Speaker 2 (34:07):

Thank you. No, I think—thank you, Mr. Brower. We'll take the, we'll take the matter under advisement and, and again nicely argued.