**Scalia and the Landmark Morrison Decision: Limiting the Scope of Securities Class Actions in America** by Wolcott Wheeler

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With the death of U.S. Supreme Court Justice Antonin Scalia, many are discussing his impact on American legal and political life.  But in the arena of securities class actions where Battea operates, his legacy is undeniable. In June 2010, he wrote the opinion for the Court’s decision in *Morrison v. National Australia Bank*, which ruled that U.S. securities laws apply *only* to domestic transactions in securities.  He argued that U.S. securities laws do *not* apply to foreign plaintiffs that sue foreign and domestic companies about conduct that affects the value of shares purchased on a foreign exchange.

In his majority opinion, Justice Scalia ruled that Section 10(b) of the Securities and Exchange Act of 1934 does not apply extraterritorially to such foreign investors (known as “f-cubed” or “foreign-cubed” investors).  In his opinion, as a renowned strict textualist, the Exchange Act is not concerned with where the deception itself transpired, but on securities traded in the U.S.; as a result, courts must apply a “presumption against extraterritoriality.”



**U.S. Supreme Court Justice Antonin Scalia**

Scalia’s decision demonstrated a much more restricted and restrained view of the extraterritorial application of U.S. laws.  The decision also largely halted the flow of suits brought against foreign companies by f-cubed investors.

In his trademark flamboyant style, Justice Scalia wrote: “While there is no reason to believe that the United States has become the Barbary Coast for those perpetrating frauds on foreign securities markets, some fear that it has become the Shangri-La of class action litigation for lawyers representing those allegedly cheated in foreign securities markets.”

We recently asked a prominent securities litigation attorney, Gregg Levin of Motley Rice’s Charleston, SC, office, what he felt was Justice Scalia’s legacy on securities class action litigation, thanks to the *Morrison*decision.

“When I first read the *Morrison*decision – and saw that Justice Scalia had written the majority opinion – the result did not surprise me,” he said.  Mr. Levin added: “After all, Justice Scalia was a strict textualist.  The concern I had – and continue to have – with the *Morrison*opinion is that it cavalierly set aside approximately four decades of legal precedent that sought to (1) protect U.S. investors from wrongdoing that caused a domestic injury and (2) promote the integrity of American capital markets.  The decision was also directly at odds with other Court decisions that had recognized that private litigation is a necessary supplement to government enforcement of our securities laws.”