

Circuit Court Decisions Addressing the Requirements for Pleading Loss Causation Under Section 10(b)

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Eighth Circuit: Not All Bad Corporate News Is “Corrective” for Loss Causation Purposes

On February 10, 2016, the Eighth Circuit underscored that “[i]n the financial markets, not every bit of bad news that has a negative effect on the price of a security necessarily has a corrective effect for purposes of loss causation.” *Dolan*, 812 F.3d 1172. The court explained that “[a] drop in stock price is not necessarily caused by an earlier misrepresentation.” Rather, a lower stock price “may reflect . . . changed economic circumstances, changed investor expectations, new industry-specific or firm-specific facts, conditions, or other events, which taken separately or together account for some or all of that lower price” (quoting *Dura Pharm. v. Brodo*, 544 U.S. 336 (2005)).

In the case before it, the Eighth Circuit found that plaintiffs had not pled loss causation as to a certain segment of the class period because plaintiffs did not adequately allege that the purported “fraud—and not other events—caused the [stock] price to fall.”

Ninth Circuit: Announcement of a Government Investigation Can Serve as a Corrective Disclosure for Loss Causation Purposes If the Inaccuracy of the Misstatement at Issue Is Subsequently Confirmed

On February 1st, 2016, the Ninth Circuit held that “the announcement of an SEC investigation related to an alleged misrepresentation, coupled with a subsequent revelation of the inaccuracy of that misrepresentation, can serve as a corrective disclosure for the purpose of loss causation.” *Lloyd v. CVB Fin. Corp.*, 811 F.3d 1200 (9th Cir. 2016) (Hurwitz, J.). The court reasoned that “any other rule would allow a defendant to escape liability by first announcing a government investigation and then waiting until the market reacted before revealing that prior representations under investigation were false.”

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