

Circuit Court Decisions Addressing Loss Causation

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Fourth Circuit: Allegations of Partial Disclosures May Be Sufficient to Plead Loss Causation

On February 22, 2018, the Fourth Circuit found plaintiffs adequately alleged loss causation based on partial disclosures concerning a government subpoena into the company's reimbursement practices. [Singer v. Reali](#), 883 F.3d 425 (4th Cir. 2018) (King, J.).

The court stated that “neither a single complete disclosure nor a fact-for-fact disclosure of the relevant truth to the market is a necessary prerequisite to establishing loss causation.” The court further stated that “partial disclosures need not precisely identify the misrepresentation or omission” but “must at least relate back to the misrepresentation or omission and not to some other negative information about the company.”

Ninth Circuit: Disclosure of the Alleged Fraud Is Not a Prerequisite for Loss Causation

On January 31, 2018, the Ninth Circuit held that “a general proximate cause test . . . is the proper test” for loss causation under Section 10(b) and Rule 10b-5 and that disclosure of the fraud is not a prerequisite for loss causation. [Mineworkers' Pension Scheme v. First Solar](#), 881 F.3d 750 (9th Cir. 2018) (*per curiam*).

The Ninth Circuit stated that in order “[t]o prove loss causation, plaintiffs need only show a causal connection between the fraud and the loss, by tracing the loss back to the very facts about which the defendant lied.” The court explained that “[r]evelation of fraud in the marketplace is simply one of the infinite variety of causation theories a plaintiff might allege to satisfy proximate cause.” The court noted that if “a stock price drop comes immediately after the revelation of fraud,” this “can help to rule out alternative causes.” However, the Ninth Circuit stated that “[a] plaintiff may also prove loss causation by showing that the stock price fell upon the revelation of an earnings miss, even if the market was unaware at the time that fraud had concealed the miss.”

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