

Eighth Circuit: No Strong Inference of Severe Recklessness Where “Confidential Former Employee” and His Sources Lacked Insight into What, If Anything, Defendant CEO Knew

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On October 18, 2021, the Eighth Circuit affirmed the dismissal of a securities fraud class action alleging that a media conglomerate and certain of its executives made false or misleading statements concerning its post-merger integration with a magazine company. [City of Plantation Police Officers Pension Fund v. Meredith Corp.](#), 2021 WL 4823411 (8th Cir. 2021) (Gruender, J.). The court determined that “the complaint fails to satisfy the heightened pleading standards with respect to the misrepresentation and mental-state requirements of [Section] 10(b) liability.” The court further determined that, even assuming *arguendo* that the CEO’s February 2019 statement that the company had “fully integrated its HR, finance, legal and IT functions” was false, a confidential former employee’s allegation that he had heard otherwise did not “give rise to a strong inference of severe recklessness.”

In support of its claim that the CEO’s statement was a material misrepresentation, plaintiff alleged that a former employee “indicated confidentially that he had heard that legacy [acquirer] employees and legacy [target] employees operated on different finance software systems until August 2019.” The court stated that “severe recklessness” is enough to establish scienter for non-forward-looking statements, but explained that a defendant is severely reckless “only if, in an extreme departure from the standards of ordinary care, he disregards a risk so obvious that he must have been aware of it.” *In re K-tel Int’l Sec. Litig.*, 300 F.3d 881 (8th Cir. 2002).

The court found that nothing in the complaint suggested that either the confidential former employee or his sources had any insight into what, if anything, the CEO knew about the software the various legacy employees were using. The court also noted that the complaint did not state with particularity “facts suggesting that it would have been so obvious that two software systems were in use that it was an extreme departure from the standards of ordinary care for [the CEO] to turn a blind eye to this fact[.]” The court explained that “[t]he more plausible inference to draw from the allegations is that [the CEO] made the statement because, as is typical for an executive overseeing an ongoing corporate consolidation, he had limited information about the inner workings of the legacy firms’ finance departments.” The court concluded that “[b]ecause the inference of severe recklessness is not at least as compelling as any opposing inference one could draw from the facts alleged, it is not the strong inference that [Section] 10(b)’s heightened pleading standard requires.”

Separately, the court determined that the various other statements at issue were “clearly either (1) statements identified as forward looking and accompanied by meaningful cautionary statements, (2) corporate puffery, or (3) forward-looking statements that the complaint’s allegations do not imply by strong inference were made with actual knowledge of their falsity.” The court characterized the following statements as “paradigmatic examples of the kind of vague and optimistic rhetoric that constitutes corporate puffery[,]” including: “hitting the ground running”; “implementing . . . proven strategies, standards, and discipline”; being “on track”; being “very pleased with the integration work so far”; and having an “industry-leading position[.]”

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