

Middle District of Florida: Statements Including an Objective and Verifiable Fact Were Not Puffery (Securities Law Alert)

09.30.22



(Article from *Securities Law Alert*, September 2022)

For more information, please visit the [Securities Law Alert Resource Center](#)

On August 4, 2022, the Middle District of Florida dismissed without prejudice a putative securities fraud class action alleging that a recycling company had made false and misleading statements about the company to investors. *Theodore v. PureCycle Techs.*, No. 6:21-cv-809 (M.D. Fla. 2022) (Byron, J.). The court held that the complaint failed to meet the standard of Federal Rule of Civil Procedure 9(b) as required for a securities fraud claim and must be dismissed because it failed to “precisely plead what statements or omissions were made in which documents or oral representations.”

The company uses a patented process to recycle a particular type of plastic into a recycled resin suitable for food-grade consumer products. Plaintiffs alleged that defendants made various false and misleading statements, which were allegedly revealed by a May 6, 2021 short seller report. Plaintiffs initiated this action alleging a violation of Section 10(b) and Rule 10b-5.

Despite dismissing the complaint on the basis that it did not meet the standard of Federal Rule of Civil Procedure 9(b), the court went on to organize the alleged false and misleading statements into discrete categories. The court then addressed defendants’ argument that certain of the alleged false statements were mere puffery and, therefore, not material. The court explained that “[t]he test for materiality in the securities fraud context is whether a reasonable man would attach importance to the fact misrepresented or omitted in determining his course of action.” *SEC v. Merch. Cap.*, 483 F.3d 747 (11th Cir. 2007). Defendants argued that statements concerning the value of the patent—such as that the patented recycling method was “revolutionary,” “transformative,” and “unique”—were puffery. The court explained that the “mere use of words such as . . . ‘transformative’ does not change a statement from being objectively verifiable to one that is so vague and generalized that any reasonable investor would know it is mere puffery.” The court stated that it must consider the statements “holistically to determine whether there are tangible, verifiable facts included in the statements despite the use of any flowery language.”

Applying this holistic approach, the court determined that statements describing the company’s recycling process as “revolutionary” were puffery. However, the court determined that several other statements could not be considered puffery, such as the company’s statement that its process uses “approximately 75% less energy” than “the traditional manufacturing process.” The court concluded that “[b]y including a quantifiable comparison between the traditional manufacturing process and [the company’s] process, it includes an objective and verifiable fact

and cannot be considered puffery.” While the court determined that certain of the statements were not puffery, nonetheless, the court dismissed the entire complaint because plaintiffs failed to identify the particular statements or omissions at issue with sufficient specificity and failed to properly plead scienter.

Authors and
Contacts

Lynn Neuner
Partner
lneuner@stblaw.com
+1-212-455-2696

Karen Porter
Partner
karen.porter@stblaw.com
+1-202-636-5539

Joshua Polster
Partner
joshua.polster@stblaw.com
+1-212-455-2266

