Simpson Thacher

Securities Law Alert

In This Edition:

- Eighth Circuit: Court Reverses Class Certification in Best Buy Action, Holding Defendants Successfully Rebutted the *Basic* Presumption with "Overwhelming Evidence" That the Alleged Misstatements Had No Price Impact
- Second Circuit: (1) "Probability" Standard Only Applies to FAS 5's Disclosure Requirement If There Was No Manifestation of a Potential Claim, and (2) Item 303 of Regulation S-K Requires the Registrant's Actual Knowledge of a Trend or Uncertainty
- Southern District of New York: Court Dismisses Securities Fraud Action Against Regional Management for Failure to Allege Material Misstatements or Omissions
- Southern District of New York: (1) "Actual Knowledge" Standard Does Not Apply to Forward-Looking Statements That Address Present Facts, and (2) PSLRA's Safe Harbor Provision Does Not Protect Material Omissions

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Simpson Thacher offers "[s]ignificant strength across bet-the-company securities and commercial disputes."

– Chambers USA 2015

Eighth Circuit: Court Reverses Class Certification in Best Buy Action, Holding Defendants Successfully Rebutted the *Basic* Presumption with "Overwhelming Evidence" That the Alleged Misstatements Had No Price Impact

In *Halliburton v. Erica P. John Fund,* 134 S. Ct. 2398 (2014), the Supreme Court held that "defendants must be afforded an opportunity before class certification to defeat the [fraud-on-the-market] presumption through evidence that an alleged misrepresentation did not actually affect the market price of the stock."[1]

1. Please click here to read our prior discussion of the *Halliburton* opinion.

On April 12, 2016, in the first circuit court opinion to apply *Halliburton* in considering defendants' price impact evidence, the Eighth Circuit reversed a district court decision granting class certification in a securities fraud action against Best Buy.[2] *IBEW Local 98 Pension Fund v. Best Buy Co.*, 2016 WL 1425807 (8th Cir. 2016) (Loken, J.). The Eighth Circuit held that defendants had successfully rebutted the fraud-on-the-market presumption by presenting "overwhelming evidence" that the alleged misstatements had no impact on Best Buy's share price. The Eighth Circuit further held that the district court had "misapplied the price impact analysis mandated by" *Halliburton* and "abused its discretion" in certifying the class.

Background

At 8 a.m. on September 14, 2010, Best Buy issued a press release announcing that it was increasing its full-year earnings per share

2. Simpson Thacher represents Best Buy and several of its executives in this action.

("EPS") guidance by ten cents to $3.55-$3.70. When the market opened an hour and a half later, Best Buy's shares were trading at $37.25, a 7.5% increase over the prior day's close-of-market share price.

At 10 a.m. that same day, Best Buy's CEO and CFO held a conference call with analysts, during which Best Buy's CFO stated that (1) the company's earnings were "essentially *in line*" with management's "original expectations for the year"; and (2) the company was "*on track* to deliver and exceed" its EPS guidance.

Between September 14, 2010 and December 13, 2010, Best Buy's share price rose (but not in a straight line) to $41.70. On December 14, 2010, Best Buy issued a press release announcing that it had reduced its EPS guidance to $3.20-$3.40 in light of a decline in third quarter sales. That day, Best Buy's shares closed at $35.52, a decline of 14.8%.

Plaintiffs subsequently brought the instant securities fraud action alleging that Best Buy and three of its executives had made misstatements in the September 14, 2010 press release and during the analyst conference call that same day. On August 5, 2013, the district court found the statements in the press release to be inactionable forward-looking statements protected under the Private Securities Litigation Reform Act's Safe Harbor provision. The court permitted plaintiffs to proceed with their claims based on the statements made during the conference call.

District Court Grants Plaintiffs' Motion for Class Certification Despite Evidence That the Conference Call Statements Did Not Affect Best Buy's Stock Price

Plaintiffs then moved for class certification, invoking the fraud-on-the-market presumption of reliance established in *Basic v. Levinson*, 485 U.S. 224 (1988). Plaintiffs presented an expert event study concluding that Best Buy's "stock price increased in reaction to the three allegedly misleading statements on September 14." Plaintiffs' expert did not separate out the effects of the 8 a.m. press release and the 10 a.m. conference call.

Defendants submitted price impact rebuttal evidence through an expert event study showing that the price increase on September 14, 2010 "occurred after the press release but *before* the call." Defendants' expert opined that "the 'on track' and 'in line' conference call statements 'had no discernible impact on Best Buy's stock price.'"

Plaintiffs' expert then submitted a reply report agreeing that "the conference call statements did not immediately increase [Best Buy's] stock price because 'the economic substance' was disclosed in the press release, and thus 'by the time the . . . conference call started, the economic substance of the alleged misrepresentations was largely reflected in Best Buy's stock price.'" In the reply report, plaintiffs' expert contended for the first time that the December 14, 2010 price decline somehow demonstrated that the "in line" and "on track" statements artificially propped up Best Buy's stock price on September 14 and throughout a three-month class period.

On August 6, 2014, the district court granted plaintiffs' motion for class certification. The court concluded that defendants had not presented adequate evidence to rebut the fraud-on-the-market presumption. *IBEW Local 98 Pension Fund v. Best Buy Co.*, 2014 WL 4746195 (D. Minn. 2014). The court reasoned that "[e]ven though [Best Buy's] stock price may have been inflated prior to the earnings phone conference, . . . the alleged misrepresentations could have further inflated the price, prolonged the inflation of the price, or slowed the rate of fall." The court determined that "price impact can be shown by a decrease in price following a revelation of the fraud," and found that defendants had "not offered evidence to show that Best Buy's stock price did not decrease when the truth was revealed." Defendants appealed.

Eighth Circuit Reverses, Finding the District Court Misapplied the Price Impact Analysis Mandated by *Halliburton*

At the outset of its discussion, the Eighth Circuit agreed with the district court's holding that "when plaintiffs presented a *prima facie* case that the *Basic* presumption applie[d] to their claims, defendants had the burden to come forward with evidence showing a lack of price impact." However, the Eighth Circuit held that the district court erred by

"ignor[ing]" defendants' "strong evidence on this issue – *the opinion of plaintiffs' own expert*."

The Eighth Circuit underscored that plaintiffs' "event study showed that the forward-looking EPS guidance in the press release had an immediate impact on the [Best Buy] market price, whereas the confirming statements in the conference call two hours later had no additional price impact." The Eighth Circuit held that "this was direct evidence that investors did not rely on the executives' confirming statements" in the conference call. The court explained that the lack of price impact was "consistent with common sense" because "[e]arnings projections are statements of what a company is 'on track' to do" and "thus, the Best Buy executives' conference call statements added nothing to what was already public."

The Eighth Circuit rejected plaintiffs' assertion that "the conference call statements effected a gradual increase in stock price between September and December." The court held that plaintiffs' argument was "contrary to the efficient market hypothesis on which the *Basic* presumption of reliance is based." The Eighth Circuit similarly rejected plaintiffs' contention that Best Buy's "price drop after the December 14 'corrective disclosure' was evidence of the requisite price impact–maintaining an inflated stock price." The court held that plaintiffs' price maintenance "theory provided no evidence that refuted defendants' overwhelming evidence of no price impact."

The Eighth Circuit concluded that "defendants [had] rebutted the *Basic* presumption by submitting direct evidence (the opinions of both parties' experts) that severed any link between the alleged conference call misrepresentations and the stock price at which plaintiffs purchased." Finding that plaintiffs had "presented no contrary evidence of price impact," the Eighth Circuit held that "the district court [had] abused its discretion by certifying the class." The Eighth Circuit reversed the district court's decision and remanded the action for proceedings "not inconsistent with [its] opinion."

In a dissenting opinion, Judge Murphy contended that the majority failed to address plaintiffs' "theory that the conference call statements prevented [Best Buy's] stock price from declining[.]"

Second Circuit: (1) "Probability" Standard Only Applies to FAS 5's Disclosure Requirement If There Was No Manifestation of a Potential Claim, and (2) Item 303 of Regulation S-K Requires the Registrant's Actual Knowledge of a Trend or Uncertainty

On March 29, 2016, the Second Circuit held that a "probability" standard applies to claims alleging a failure to disclose a loss contingency for unasserted claims pursuant to Financial Accounting Standard 5 ("FAS 5") only if there has been "*no* manifestation by a potential claimant of an awareness of a possible claim or assessment." *Indiana Pub. Ret. Sys. v. SAIC*, 2016 WL 1211858 (2d Cir. 2016) (Lohier, J.) (*SAIC IV*). In cases where a potential claimant has manifested awareness of a possible claim, the court held that FAS 5's disclosure requirements apply if a loss in connection with that claim is a "reasonable possibility."

The Second Circuit further held that Item 303 of Regulation S-K, which mandates the disclosure of certain "known trends or uncertainties" in a public company's Form 10-Ks and other SEC filings,[3] "requires the registrant's *actual knowledge* of the relevant trend or uncertainty" (emphasis added).

Background

The case before the Second Circuit concerned allegations that SAIC and several of its executives made "material misstatements and omissions in SAIC's public filings regarding its exposure to liability for employee fraud in connection with SAIC's contract work for New York City's CityTime project," an automated timekeeping program for government employees.

3. Item 303 of Regulation S-K requires a registrant to "[d]escribe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations."

In 2002, SAIC hired Gerard Denault to run the CityTime project. Denault soon initiated "an elaborate kickback scheme" which increased the costs of the CityTime project by hundreds of millions of dollars.

In late 2010, SAIC placed Denault on administrative leave and commenced an internal investigation. On March 9, 2011, SAIC's audit team reported that its investigation uncovered "improper timekeeping practices" by Denault. Around the same time period, then-Mayor Michael Bloomberg announced he was considering seeking recovery of the City's payments to SAIC in connection with the CityTime project. A criminal investigation into the CityTime project was also underway.

On March 25, 2011, SAIC filed its Form 10-K. The company did not disclose any potential liability related to the CityTime project but instead "touted its commitment to high standards of 'ethical performance and integrity.'" It was not until SAIC filed its Form 8-K on June 2, 2011, that the company disclosed its exposure to potential criminal liability and the possible reimbursement of payments made by the City for the CityTime project. Ultimately, SAIC terminated Denault's employment and entered into a deferred prosecution agreement, "pursuant to which SAIC agreed to reimburse the City approximately $500.4 million and to forfeit $40 million in unpaid receivables."

Among other claims, plaintiffs alleged that SAIC's March 2011 Form 10-K failed to disclose (1) loss contingencies as required under FAS 5 of the Generally Accepted Accounting Principles ("GAAP"), and (2) "known trends or uncertainties" that could have a material impact on SAIC's income, as required under Item 303 of Regulation S-K. On January 30, 2014, the district court dismissed plaintiffs' FAS 5 and Item 303 claims. *In re SAIC Sec. Litig.*, 2014 WL 407050 (S.D.N.Y. Jan 30, 2014) (*SAIC II*). Plaintiffs sought leave to amend their complaint to include additional allegations in support of their FAS 5 and Item 303 claims. On September 30, 2014, the district court denied plaintiffs' motion to file an amended complaint, finding that any such amendment would be futile. *In re SAIC Sec. Litig.*, 2014 WL 4953614 (S.D.N.Y. Sept. 30, 2014) (*SAIC III*). Plaintiffs appealed.

Second Circuit Holds the District Court Erred in Applying a "Probability" Standard to Plaintiffs' FAS 5 Claims

Under FAS 5 of GAAP, an issuer must "disclose a loss contingency when a loss is a 'reasonable possibility,' meaning that it is 'more than remote but less than likely.'" *SAIC IV*, 2016 WL 1211858 (quoting FAS Board, Statement of FAS 5).

The district court determined that under FAS 5, disclosure of a loss contingency in connection with a potential claim "is not required . . . unless it is considered *probable* that a claim will be asserted." *SAIC II*, 2014 WL 407050 (emphasis added). The court held that plaintiffs had failed to state a claim for failure to disclose a loss contingency under FAS 5 because the allegations did "not suggest that, by the time of the March 2011 filing, the information available left the company with the belief that a claim or assessment against it was probable." *SAIC II*, 2014 WL 407050.

On appeal, the Second Circuit determined that the district court "appear[ed] to have misunderstood the standard applicable to claims under FAS 5." *SAIC IV*, 2016 WL 1211858. The Second Circuit explained that "[t]he 'probability' standard applies in lieu of the 'reasonable possibility' standard only if the loss contingency arises from 'an

unasserted claim or assessment when there has been *no* manifestation by a potential claimant of an awareness of a possible claim or assessment'" (quoting FAS Board, Statement of FAS 5). In the case before it, however, the Second Circuit held "the 'reasonable possibility' standard applie[d] in view of the [amended complaint's] allegation that by March 2011 the City *had* manifested an awareness of a possible, sizeable claim against SAIC."

The Second Circuit found the amended complaint adequately alleged that by March 2011, "the CityTime criminal investigation was as focused on SAIC as it was on SAIC's individual employees[.]" The complaint also "alleged that by March 9, 2011, when SAIC received the results of its internal investigation about possible fraud, SAIC was aware not only of Denault's wrongdoing but also its own potential liability to the City." In view of these allegations, the Second Circuit held the amended complaint stated a claim based on SAIC's failure to disclose a loss contingency under FAS 5.

Second Circuit Holds Item 303 of Regulation S-K Requires the Registrant's Actual Knowledge of the Trend or Uncertainty At Issue

The Second Circuit noted that it has "never directly addressed whether Item 303 requires that a company actually know or merely should have known of the relevant trend, event, or uncertainty in order to be liable for failing to disclose it." The Second Circuit observed that in prior cases, it had "assumed, without deciding, that Item 303 required an allegation or showing of actual knowledge rather than a lesser standard of recklessness or negligence."

Considering the question squarely for the first time, the Second Circuit held that "Item 303 requires the registrant to disclose only those trends, events, or uncertainties that it actually knows of when it files the relevant report with the SEC." The court reasoned that "[t]he plain language of Item 303" supports this interpretation. Specifically, "Item 303 demands that the registrant '[d]escribe any *known* trends or uncertainties' and also requires disclosure where '*the registrant knows of* events that will cause a material change in the relationship between costs and revenues,' such as a '*known* future increase[ ] in costs of labor'" (quoting Item 303) (emphasis added by the court). The Second Circuit also noted that "[t]he SEC's interpretation of Item 303 further confirms this plain-language reading of Item 303, insofar as it advises that the trends or uncertainties must be 'presently *known to management*'" (quoting the SEC's Interpretive Release) (emphasis added by the court). Significantly, the Second Circuit stated that "[i]t is not enough" for purposes of Item 303 that the registrant "*should have known* of the existing trend, event, or uncertainty" (emphasis added).

Second Circuit Determines Plaintiffs Adequately Alleged a Failure to Disclose a Known Trend or Uncertainty Under Item 303 of Regulation S-K

Applying this standard to plaintiffs' allegations, the Second Circuit held that the amended complaint "support[ed] a strong inference that SAIC actually knew (1) about the CityTime fraud before filing its Form 10-K on March 25, 2011, and (2) that it could be implicated in the fraud and required to repay the City the revenue generated by the CityTime contract." The court also found the amended complaint alleged that "[e]xposure of the fraud also jeopardized SAIC's existing or future relationships with other governmental entities that accounted for a significant amount of its revenue." Given these allegations, the Second Circuit held that SAIC was required under Item 303 to disclose how the CityTime issues "might reasonably be expected to materially impact SAIC's future revenues."

Notably, the Second Circuit rejected defendants' contention that "the loss of the CityTime contract was ultimately not material in view of the fact that it was a single contract out of SAIC's more than 10,000 ongoing contracts and that it was worth a fraction of SAIC's yearly revenues[.]" The court found that SAIC's materiality argument suggested that it should "consider quantitative factors only in the narrowest light in determining the financial impact of losing the CityTime project due to the fraud, and to otherwise ignore qualitative factors." The Second Circuit explained that given "[t]he seriousness of the CityTime fraud and the alleged importance of the CityTime project to SAIC's future presence in the City and its ability to sell similar

services to other municipalities around the United States," it was "reluctant to conclude at this stage that the alleged misstatements were 'so obviously unimportant' either quantitatively or qualitatively that they could not be material."

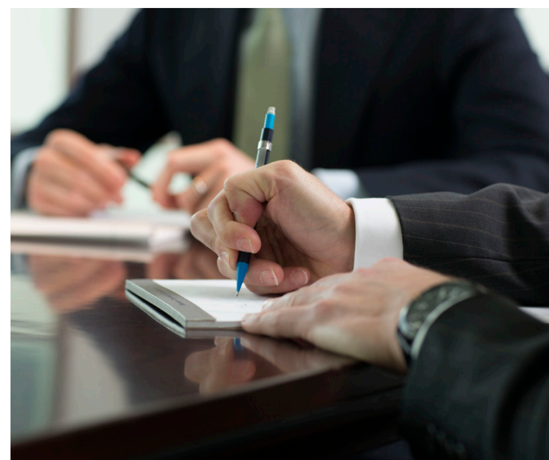
Second Circuit Deems Inactionable SAIC's Statements Concerning Its Commitment to Ethics and Integrity

On appeal, the Second Circuit also considered plaintiffs' contention that the district court erred in dismissing claims based on allegedly "materially false statements about SAIC's commitment to ethics and integrity" in its 2011 Annual Report. The Second Circuit held "'[p]laintiffs' claim that these statements were knowingly and verifiably false when made does not cure their generality, which is what prevents them from rising to the level of materiality required to form the basis for assessing a potential investment'" (quoting *City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, 752 F.3d 173 (2d Cir. 2014)). The court explained the statements at issue here were indistinguishable from the "puffery" it had previously rejected in *ECA, Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase*, 553 F.3d 187 (2d Cir. 2009). In *ECA*, the Second Circuit held that statements concerning a company's commitment to integrity are "typically 'too general to cause a reasonable investor to rely upon them,' in part because an investor 'would not depend on [the statements] as a guarantee that [the company] would never take a step that might adversely affect its reputation'" (quoting *ECA*, 553 F.3d 187). The court therefore affirmed dismissal of claims based on those statements.

Notably, the Second Circuit clarified its decision should not be read to mean "that statements about a company's reputation for integrity or ethical conduct can never give rise to a securities violation." The court explained that "[s]ome statements, in context, may amount to more than 'puffery' and may in some circumstances violate the securities laws[.]" The Second Circuit offered as an example of this exception "a company's specific statements that emphasize its reputation for integrity or ethical conduct as central to its financial condition or that are clearly designed to distinguish the company from other specified companies in the same industry."

Southern District of New York: Court Dismisses Securities Fraud Action Against Regional Management for Failure to Allege Material Misstatements or Omissions

On March 30, 2016, the Southern District of New York dismissed in its entirety a securities fraud action against Regional Management ("RM"), a consumer finance company specializing in subprime lending.[4] *Waterford Twp. Police & Fire Ret. Sys. v. Reg'l Mgmt. Corp.*, 2016 WL 1261135 (S.D.N.Y. 2016) (Swain, J.). The court found that plaintiffs failed to identify any "misstatements or omissions of material facts" and "rest[ed] solely on non-actionable opinion statements" and allegations of fraud by hindsight.



Background

RM's loan offerings include the mailing to prescreened customers of "live checks," which, when cashed, become loans. In the complaint, plaintiffs alleged misrepresentations about the loan loss reserves for and credit performance of RM's live check program. Plaintiffs also alleged that RM's underwriting practices were unsound and that RM should have predicted and disclosed in advance increased delinquencies in live checks. Defendants moved to dismiss plaintiffs' complaint for "fail[ure] to allege any actionable misstatement or omission of material fact."

4. Simpson Thacher represents Regional Management, its current and former directors and officers, and its former shareholders Palladium Equity Partners and Parallel Equity Partners in this action.

Court Holds Plaintiffs Failed to Allege Any Material Misrepresentations or Omissions

The court granted defendants' motion to dismiss in its entirety, finding that plaintiffs failed as a matter of law to allege any material misrepresentation. As to plaintiffs' principal claims, which related to RM's loan loss reserves and credit performance statistics, the court found that plaintiffs failed to allege that any of those statistics were misstated in any way.

The court held that plaintiffs "failed to plead facts demonstrating that RM's earlier loss reserve provisions were not the product of sincere opinions regarding appropriate loss reserves, notwithstanding the subsequent substantial increase in those provisions following the change of management."

The court similarly held that plaintiffs' claims that RM should have anticipated and disclosed in advance that (i) live check loan delinquencies might increase and (ii) its staffing levels were inadequate were inactionable claims of "fraud by hindsight." The court explained that under Second Circuit precedent, "[p]laintiffs may not sustain causes of action" that "rely[ ] on 'allegations that defendants should have anticipated future events and made certain disclosures earlier than they actually did'" (quoting *Novak v. Kasaks*, 216 F.3d 300 (2d Cir. 2000)).

In addition, the court held that "RM's characterizations of its underwriting practices as 'sound' or 'targeted,'" were "statements in the nature of belief or opinion." The court dismissed such claims because there were no allegations "demonstrating that RM or [its executives] did not believe the statements were true at the time they were made," as required under the Second Circuit's decision in *Fait v. Regions Fin. Corp.*, 655 F.3d 105 (2d Cir. 2011).[5] Plaintiffs alleged "no facts demonstrating that RM's management believed that the [c]ompany's underwriting practices were unsound or inappropriate for a program of that type, which involved offering loans to large numbers of subprime borrowers at high interest rates." The court further found that there were no allegations "demonstrating that RM knowingly failed to follow the underwriting practices that it actually disclosed, or that those practices were objectively unsound in the context of the live check program."

Southern District of New York: (1) "Actual Knowledge" Standard Does Not Apply to Forward-Looking Statements That Address Present Facts, and (2) PSLRA's Safe Harbor Provision Does Not Protect Material Omissions

On April 22, 2016, the Southern District of New York denied defendants' motion to dismiss a securities fraud action brought against Salix Pharmaceuticals and two of its former officers alleging that defendants had made false or misleading statements concerning the inventory levels for certain drugs. *In re Salix Pharmaceuticals*, 2016 WL 1629341 (S.D.N.Y. 2016) (Wood, J.). The court held that the "actual knowledge" requirement for forward-looking statements under the safe harbor provision of the Private Securities Litigation Reform Act ("PSLRA") does not apply to any statement that "encompasses a representation of present fact." The court further held that the PSLRA's safe harbor "does not protect material omissions."

5. Please click here to read our prior discussion of the *Fait* decision.

PSLRA's "Actual Knowledge" Requirement for Forward-Looking Statements Does Not Apply to Statements That Discuss Present Facts

The court explained that under the PSLRA's safe harbor provisions, plaintiffs asserting securities fraud claims based on forward-looking statements must show that the "statements were made with actual knowledge of their falsity by the speaker." The court noted that "the scienter requirement for forward-looking statements is stricter than for statements of current fact." A plaintiff may establish scienter with respect to an alleged misstatement of present facts with "a showing of either knowing falsity or recklessness[.]" As to forward-looking statements, however, a plaintiff must provide "proof of knowing falsity."

In the case before the court, defendants contended that many of the statements at issue were forward-looking because the statements "predict[ed] future inventory levels." However, the court found that these "statements *also* encompass[ed] representations of present fact" and were therefore "*not* subject to the PSLRA safe harbor." For example, the court pointed to statements expressing defendants' expectation that inventory levels of certain pharmaceuticals "would return to 'typical' levels by the end of the following quarter." The court determined that these statements were "predicated upon representations that *current* inventory levels" were not "typical." The court held that "representations concerning current inventory levels constitute[d] actionable misstatements, and, because they pertain[ed] to present facts rather than future projections, [were] not subject to the heightened scienter requirement of the PSLRA safe harbor."

PSLRA's Safe Harbor Provision for Forward-Looking Statements Does Not Apply to Material Omissions

The court further explained that the PSLRA's safe harbor provision "does not protect material omissions."

Here, the court held that defendants' statements concerning future inventory levels were "misleading because of material omissions" regarding the inventory levels at the time. The court found that these "omission[s] led analysts to believe that inventory levels were merely slightly outside of the range that [d]efendants described as 'normal' and could be returned to that level within about three months" when "[i]n fact, as [d]efendants later revealed, it would take several years to return wholesaler inventory" to a "normal" level. The court noted that while "a listener's misunderstanding of what was said does not, on its own, make a statement misleading, the allegation that several different analysts understood [d]efendants as describing current inventory levels provide[d] support for the [c]ourt's conclusion that [d]efendants' statements [were] reasonably interpreted as such."

Because defendants' statements concerning future inventory levels included material omissions, the court held that these statements were "not subject to the PSLRA safe harbor for forward-looking statements."

Cautionary Language Must Specifically Address the Allegedly Undisclosed Risk

Finally, the court determined that defendants' cautionary language "was inadequate to warn of the specific risk" of inventory build-up at issue here.

The court explained that in order "[t]o avail themselves of the safe harbor protection under the meaningful cautionary language prong, defendants must demonstrate that their cautionary language was not boilerplate and conveyed substantive information." The court underscored that "the relevant cautionary language must be prominent and specific, and must directly address exactly the risk that plaintiffs claim was not disclosed."

Here, the court found that defendants' "brief and generic" disclaimers were insufficient to satisfy the PSLRA's cautionary language requirement. The court noted that "[i]n more than twelve pages of cautionary statements, 'inventory' [was] mentioned only once as a possible factor that could impact future revenue predictions[.]" The court held that this "limited reference fail[ed] to alert the reasonable investor either to (1) the much broader risk of inventory build-up at issue here, or (2) the lack of management review of inventory levels to monitor the risk." The court further found defendants' "failure to

update [the] cautionary language over time to reflect new information and new risks support[ed] the conclusion" that defendants' warnings were "merely boilerplate."

Court Holds Plaintiffs Adequately Alleged Scienter Under the Actual Knowledge or Recklessness Standard Applicable to Statements of Present Fact

Because the court found that the statements at issue were not forward-looking, the court held that plaintiffs could establish scienter by showing that defendants either "knew or were reckless in failing to learn Salix's true inventory levels." The court found that plaintiffs had "raise[d] a strong inference of scienter" by alleging that "potential acquirers were able to determine Salix's true whole inventory levels" with ease and also by pointing to "specific reports and statements showing that [d]efendants were aware of or could access Salix's true wholesale inventory levels." The court further determined that "[t]he magnitude of [d]efendants' alleged fraud and the fact that it involved the core operations of Salix's business also support[ed] a strong inference of scienter."

The court therefore denied defendants' motion to dismiss in its entirety.

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