



Alerts

Third Circuit Applies Stoneridge, Denies Class Certification to Securities Fraud Claims Against Law Firm

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In re DVI Securities Litigation, ___ F.3d ___, 2011 WL 1125926 (3d Cir. 2011)

Brief Summary

The U.S. Court of Appeals for the Third Circuit declined to certify a securities fraud class action against defendant company's law firm because the allegedly fraudulent conduct was not publicly attributable to the firm.

Complete Summary

This securities fraud class action involved claims against a bankrupt company's outside corporate counsel, among others. The investor plaintiffs alleged that the law firm had participated in a fraudulent scheme in violation of Rules 10b-5(a) and (c), which were promulgated under Section 10(b) of the [1934 Securities Exchange Act](#). Under Section 10(b), plaintiffs must establish that their purchases or sales of securities were made in reliance on the defendant's fraudulent conduct. In order to facilitate class certification, there is a rebuttable presumption in securities fraud cases that the plaintiffs relied on any materials that were publicly available to the relevant securities market, provided that the market operated efficiently (i.e., the fraud-on-the-market theory). The issue here was whether the fraud-on-the-market theory could be used to create a presumption of reliance on the law firm's allegedly fraudulent conduct.

Applying *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 128 S. Ct. 761 (2008), the Third Circuit held that where plaintiffs seek to recover against a secondary actor such as a law firm for scheme liability under Section 10(b), the allegedly deceptive conduct must have been publicly attributed to the secondary actor in order for the plaintiff to invoke the fraud-on-the-market presumption of reliance. Here the law firm's alleged fraud was related to its work on the company's 10-Q financial statement. Although the 10-Q was publicly disclosed, the court found that the financial statement was not publicly attributed to the law firm. Therefore, the court held that the investors failed to establish the reliance element necessary for class certification.

Significance of Opinion

The Third Circuit's decision, applying the U.S. Supreme Court's decision in

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Stoneridge, establishes a threshold hurdle for plaintiffs who seek to rely on the rebuttable presumption of reliance in securities class actions against secondary actors. Where there was no public attribution of the alleged conduct, plaintiffs are not entitled to the presumption of reliance, and class certification is properly denied. The Third Circuit's decision here is consistent with that of the U.S. Court of Appeals for the Second Circuit in *Pac. Inv. Mgmt. Co. v. Mayer Brown LLP* ("*Refco*"), 603 F.3d 144 (2d Cir. 2010).

For more information, please contact your regular [Hinshaw](#) attorney.

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