

FEDERAL COURT IN CALIFORNIA DISMISSES SECURITIES FRAUD SUIT

by
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Earlier this year, a U.S. Court of Appeals for the Ninth Circuit ruling raised alarms in the legal and business communities by alluding to “this era of corporate scandal, when insiders manipulate the market” as one reason to perhaps look more forgivingly at plaintiffs’ securities fraud class action complaints. *See No. 84 Employee-Teamster Joint Council Pension Trust Fund v. America West Holding Corp.*, 320 F.3d 920, 946 (9th Cir. 2003). A recent federal district court ruling in California should offer targets of securities class action suits some cause for optimism, however. The court strictly applied the pleading requirements of the Private Securities Litigation Reform Act of 1995 (“PSLRA”) to dismiss a suit against Intel. *In re Intel Corp. Sec. Litig.*, No. C-01-20888-JF (N.D. Cal. July 28, 2003) (This decision, marked “Not for Citation” by the court, is available at www.wlf.org).

In *In re Intel*, the plaintiffs, represented by noted class action specialists Milberg, Weiss, Bershad, Hynes & Lerach, alleged that Intel made knowingly false and misleading claims about its revenue projections for the third quarter of 2000 and about its products. They also claimed that Intel was liable for overly-optimistic statements made by third-party analysts about those earnings. Problems with several lines of computer chips, and an announcement that third quarter revenue would be quite lower than earlier anticipated, led Intel’s stock to drop from \$61 to \$46.50 in the largest ever one-day trading volume of any stock. A class action lawsuit soon followed. Judge Jeremy Fogel dismissed the plaintiffs’ initial complaint for failing to meet the requisite pleading standards, but granted leave to amend and re-file the action.

As is the case with most securities fraud cases falling under the PSLRA, the judge’s decision turned on whether the plaintiffs could demonstrate that Intel knowingly misled investors. Rejecting the plaintiffs’ argument that the *America West* ruling reduced their pleading burden, Judge Fogel applied the Ninth Circuit’s intent standard of “deliberate recklessness” or “actual knowledge” that a statement is false or misleading. *See In re Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 977 (9th Cir. 1999). The court first ruled that because Intel’s press release on its revenue projections included “meaningful cautionary language,” it was protected from fraud allegations. The judge next found that despite new information provided by numerous confidential witnesses, the plaintiffs failed to provide information which taken together “gave rise to a strong inference” that the company’s revenue projections “were made with ‘actual knowledge’ of their falsity.” *In re Intel*, slip op. at 11. Finally, the court found the fraud claims relating to the third-party analysts and Intel’s statements about its products equally lacking in specific proof.

An appeal of this ruling would provide the Ninth Circuit with an important opportunity to reiterate that neither corporate scandals nor a severe drop in the price of a company's stock should have an impact on the proof plaintiffs must present in a federal securities fraud case. In the meantime, Judge Fogel's ruling and reasoning should be of interest to defendants currently facing securities class action suits.

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