

Ninth Circuit Affirms Dismissal of Securities Class Action Against Qualcomm

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Cooley litigators secured a win on behalf of Qualcomm, a San Diego based technology company that specializes in semiconductors, in a securities class action filed in the United States District Court for the Southern District of California. The cross-functional team for the Ninth Circuit appeal brought together members of Cooley's business litigation, securities litigation, and appellate practice groups—specifically, Cooley partners Steven M. Strauss, Koji F. Fukumura, and Peter M. Adams, and associates Stephen Richards and Julie Veroff. Cooley partner Koji F. Fukumura argued both in district court and the Ninth Circuit appeal. The successful outcome earned the team a shout out as part of [Am Law's Litigator of the Week Runners-Up and Shout Outs](#) list.

Background

Cooley represented Qualcomm Inc. and the four individual defendants, who included the company's senior most executives. In late 2017, Broadcom Ltd., a Singapore-based company, made an unsolicited offer to buy Qualcomm, which quickly rejected the offer because it grossly undervalued the company and came with too much regulatory risk. In response, Broadcom mounted a proxy fight to replace the entire Qualcomm board at an upcoming shareholder meeting. Over the ensuing months, Qualcomm made clear to investors and Broadcom that a fair price was fundamental to any deal between the two companies and repeatedly explained that the proposed transaction would raise serious concerns for regulators, including the Committee on Foreign Investment in the United States ("CFIUS"), which could meaningfully delay or block any deal between the two companies. Consistent with its public stance on regulatory risk Qualcomm asked CFIUS in January 2018 to review Broadcom's effort to seize control of the board. Qualcomm did so confidentially, which is the default approach contemplated by federal regulations governing the CFIUS process. CFIUS began its review, which involved requesting and receiving information from both companies. Meanwhile, the companies continued to negotiate about a possible deal. A month later, in February 2018, a national news outlet reported that CFIUS was reviewing Broadcom's takeover attempt. The market had no reaction; Qualcomm's stock price did not change. A week later, CFIUS announced that it was ordering Qualcomm to postpone its upcoming shareholder meeting and, because of national security concerns, was imposing certain interim requirements on Broadcom. Qualcomm's stock price declined over the following two days. A week later, after Broadcom had violated CFIUS's interim requirements at least three times, then-President Trump issued an executive order permanently blocking the deal. Qualcomm's stock price dropped the next day.

Plaintiffs filed a putative securities fraud class action, contending that Qualcomm's statements about its willingness to negotiate with Broadcom and the regulatory risk involved in any potential deal were materially false or misleading because Qualcomm did not disclose that it had asked CFIUS to look into Broadcom's attempt to take over Qualcomm's board.

Dismissal Affirmed

Cooley filed a motion to dismiss, which Judge Battaglia of the Southern District of California granted in March 2020. He held that Plaintiffs had failed to adequately plead two essential elements of a securities fraud claim—scienter and loss causation. He granted leave to amend, but Plaintiffs fared no better on their second try. The case was reassigned to Judge Bencivengo, who dismissed Plaintiffs' Second Amended Complaint with prejudice. Ruling from the bench, she held that Plaintiffs failed to adequately plead falsity, scienter, and loss causation.

Cooley continued to defend Qualcomm on appeal, where it achieved a complete victory. The Ninth Circuit reviewed the dismissal de novo, adopted the reasoning in Cooley's briefing, and affirmed on all three issues—falsity, scienter, and loss causation. On falsity, the Ninth Circuit explained that Qualcomm had made it clear from the outset that its directors and officers opposed the deal and that the deal posed significant regulatory risks, and "reject the Investors' argument that, despite these statements, Qualcomm downplayed the risk of regulatory oversight by CFIUS." The court explained that "egotiating in good faith is not necessarily incompatible with having sincere regulatory, antitrust, and national security concerns," "Qualcomm's statements regarding good faith negotiations came with significant qualifications and caveats,"

and “CFIUS’s and the administration’s subsequent actions were not foreseeable in a way that would have given rise to a duty to provide any more definite qualifying statements.” On scienter, the Ninth Circuit held that Plaintiffs failed to allege any facts from which a reasonable person could conclude it was plausible that Qualcomm made false or misleading statements either intentionally or with deliberate recklessness. And as to loss causation, the Ninth Circuit held that Plaintiffs failed to allege “a causal connection between the allegedly wrongful statements and omissions in late 2017 and early 2018 and the stock-price drop,” noting that the public learned of the CFIUS review two weeks before any stock-price drop, and that the stock only dropped after CFIUS ordered Qualcomm to postpone its board elections and again after then-President Trump blocked the deal.

Significance

This case is the first of which Defendants’ counsel is aware involving a securities fraud claim stemming from a notice to CFIUS. The Ninth Circuit confirmed that a lawful and appropriate notice to CFIUS cannot be transformed into securities fraud absent any sufficient pleading of falsity, scienter, or loss causation. In so doing, the Court made clear that a company can simultaneously negotiate a deal in good faith and harbor genuine regulatory concerns about any ultimate deal reached by the parties.

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