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# On Remand, Texas District Court Concludes Fifth Circuit Dealt 'Iatrogenic Blow' to Securities Plaintiff, Dismisses Case

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As discussed in a previous blog post, the US Court of Appeals for the Fifth Circuit issued a January 2023 decision that reversed the dismissal of a putative securities class action against Six Flags on the grounds that the plaintiff's complaint adequately stated a claim for securities fraud. In a surprising twist, on remand, the US District Court for the Northern District of Texas issued a June 2, 2023, decision **again** dismissing the case. This time, however, the district court did so not due to substantive deficiencies with the securities law claims, but based on the plaintiff's standing.

Specifically, the district court observed that the Fifth Circuit held that "statements" made by Six Flags before October 2019 **could** support claims capable of surviving a motion to dismiss, but "statements" made thereafter **could not**, because by that point Six Flags had made a full corrective disclosure. The district court reasoned that because the lone lead plaintiff had purchased Six Flags stock **after** October 2019, it could not show reliance on the alleged misstatements and thus lacked standing to sue Six Flags: " plaintiff in line at this Court without standing is too short to ride." The district court rebuffed the effort of a new would-be plaintiff's attempt to intervene, holding that the lack of standing deprived the court of adjudicatory authority such that "there is no 'case' or 'controversy' in which intervene."

The benefit of the district court's decision to Six Flags is obvious, but the broader significance is less clear. On the one hand, the Fifth Circuit's plaintiff-friendly decision (which we observed departed from the law of other circuits in meaningful ways) remains good law in the Fifth Circuit. And while the district court's decision includes several colorful footnotes related to the Fifth Circuit's opinion – e.g., "Where Man's original sin was his persistent desire to be like God, so the Judiciary's was its desire to write with the opaqueness of a legislature" – these pointed comments are largely focused on the clarity of the Fifth Circuit's language rather than its application of the law. On the other hand, the district court in at least one instance openly questions "whether the Fifth Circuit's recounting of th case was artful **or correct**" (emphasis added). Parties defending against securities class actions may consider whether and how to point to that skepticism – and the district court's reinstatement of its earlier dismissal – when arguing that the reach of the Fifth Circuit's decision should be cabined.

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