

Securities Litigation + Enforcement Highlights for Q3 2023

November 2, 2023

Through the summer and into the fall of 2023, Cooley's securities litigation + enforcement practice continued to provide our clients with thoughtful analysis on recent developments in securities law, while also obtaining key wins for them. Below, we've rounded up key insights and developments from our team over the past quarter.

[Second Circuit Confirms That Corrective Disclosure Mismatch May Preclude Class Certification](#)

The US Court of Appeals for the Second Circuit dealt a blow to securities class action plaintiffs when it decertified the investor class in a long-running securities class action. The Second Circuit's ruling makes clear that courts must carefully consider a defendant's price impact arguments – meaning that securities defendants now have a helpful roadmap to defeating class certification.

[Eleventh Circuit Reiterates Loss Causation Not a Given at Pleading Stage](#)

The US Court of Appeals for the Eleventh Circuit recently upheld the dismissal of a securities class action on loss causation grounds, signaling that loss causation is not a given at the pleading stage. In doing so, the court reaffirmed that for a disclosure to truly be “corrective,” it must reveal something new, not just reiterate information that was already publicly available.

[Securities Plaintiffs Pursuing Crypto, Banking and High-Dollar-Value Cases in 2023, According to Cornerstone Research Report](#)

A midyear report on securities class action filings found that despite a slight uptick in filings during the first half of 2023, the pace of filings is still below pre-pandemic peak levels. At the same time, a substantial increase in maximum dollar loss amounts suggests that plaintiffs are continuing to aggressively pursue securities claims, but they are focusing on value over volume. In addition, the report found that new filings involving cryptocurrency and banking are up, while new filings involving M&A, COVID-19, special purpose acquisition companies and Securities Act of 1933 claims brought in state courts are down.

[Keeping Up With M&A Case Law – Spotlight on Recent Delaware Decisions](#)

The mergers & acquisitions market may wax and wane, but Delaware courts continue to issue opinions that impact M&A dealmaking. In this post, we summarize key takeaways from recent cases, including that *Corwin* cleansing does not apply to post-closing claims for injunctive relief; that the “potential” for control is not enough to trigger the entire fairness standard; and that an exclusive forum clause in a merger agreement cannot itself confer subject matter jurisdiction onto a court.

[District Court Upholds Forum Selection Provision for Claims Brought Derivatively Under Section 10\(b\)](#)

In what appears to be a novel decision, the US District Court for the Northern District of Texas upheld a Delaware forum-selection clause as to claims asserted derivatively under Section 10(b) of the Exchange Act. Tulane professor Ann Lipton wrote that the Texas district court decision “breaks new ground ... because it extends forum selection enforcement to derivative 10(b) claims,” reflecting “a gradual ability of corporations to opt out of the securities laws.”

Awards, recognition and accolades

Two teams of Cooley securities litigation + enforcement lawyers earned a spot on The American Lawyer's Litigation Daily Litigator of the Week Runners-Up and Shout Outs list this quarter:

- [Shoutout for securing a motion to dismiss for AcetRx Pharmaceuticals](#)
- [Shoutout for securing a motion to dismiss on behalf of Sequenom's former board of directors](#)

Contributors

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