Cooley

Deciding Issue of First Impression, Fourth Circuit Holds Short-Seller Report Could Not Support Loss Causation – in Significant Cooley Win

May 28, 2025

On April 8, 2025, the US Court of Appeals for the Fourth Circuit affirmed the US District Court for the District of Maryland's dismissal of all claims in *Defeo et al. v. IonQ, Inc. et al*., a securities class action asserting violations of § 10(b) and Rule 10(b)(5), § 14(a) and Rule 14a-9, and § 20(a) of the Securities and Exchange Act of 1934. Shareholders alleged that the IonQ and dMY Technology Group merger in October 2021 misled investors about IonQ's quantum computing technology and concealed that a third party was the source of its increased bookings.

In doing so, the court decided an issue of first impression in the Fourth Circuit, holding that allegations from short-seller reports are insufficient to plead loss causation and cannot form the basis of a securities fraud claim where the short-seller is anonymous, disclaims the accuracy of its opinions and is not corroborated by other sources. The Cooley team that secured this precedent-setting win earned a runners-up recognition on The American Lawyer's Litigation Daily Litigator of the Week Runners-Up and Shout Outs list.

Background

In May 2022, shareholders sued IonQ, two of its executives and various officers of dMY Technology Group, Inc. III, a special purpose acquisition company that merged with IonQ in September 2021, alleging that they had misled investors about the existence and computing capabilities of IonQ's revolutionary 32-qubit quantum computer, thus inflating IonQ's share price. The suit also alleged that IonQ concealed that a related third party was the source of its bookings, as opposed to cloud-based customers, in an effort to keep share prices high and further deceive investors.

To support their theories of fraud, the shareholders principally relied on allegations made in a report by a short-seller, Scorpion Capital, that was published in May 2022 – about six months after IonQ's merger with dMY. The Scorpion report stated that the company's claims about the existence of its quantum computing systems and related technological advances were false, according to purported interviews with unidentified former employees and experts in the field. Importantly, the Scorpion report also included a long list of prefatory disclosures, including that:

- Scorpion Capital was short on IonQ stock and "stands to realize significant gains in the event that the price of its stock, bonds, options and/or other securities decline or change."
- The nonpublic information in the report may be inaccurate.
- Scorpion Capital "cannot and does not provide any representations or warranties with respect to the accuracy" of the report.
- Scorpion Capital could not authenticate the accuracy of the experts it spoke with.
- "The quotations of experts … do not reflect all information they have shared with us, including, without limitation, certain positive comments and experiences with respect to IonQ."
- The unidentified experts were compensated and may have conflicts of interest or other biases, "which may give them an incentive to provide us with inaccurate, incomplete or otherwise prejudiced information."

The day after the Scorpion report was published, IonQ issued a press release rebuking it for its "important inaccuracies and mischaracterizations regarding IonQ's business and progress to date." IonQ encouraged its investors not to trade IonQ stock based on the report. The next week, IonQ released a longer statement addressing the report and stating that it was "a poorly researched 183-page deck intended to manipulate the stock price of IonQ," that was "riddled with disinformation, demonstrating a breathtaking ignorance of the quantum computing industry in general and IonQ technology in particular." Despite the company's assurances, IonQ share prices plummeted nearly 45% in the weeks that followed.

On September 29, 2023, the district court dismissed the shareholders' first amended complaint with prejudice. The court ruled that the shareholders failed to state a claim, holding that they could not demonstrate that the author(s) of the Scorpion report, or the former IonQ employees whom they purportedly interviewed, were reliable sources of information. The court also found that the shareholders failed to sufficiently plead that the defendants knowingly made

misrepresentations about the company's quantum computing technology, or that investors suffered losses as a result. Finally, the court found that the shareholders failed to plead loss causation.

Rather than appealing this decision, the shareholders requested post-judgment relief in the district court, simultaneously moving for reconsideration and for leave to file a second amended complaint. Their proposed second amended complaint added allegations intended to bolster the portions of their amended complaint the district court found insufficient. On July 10, 2024, the court rebuffed the shareholders' attempt to revive their class action because the Scorpion report and the shareholders' confidential witness were deemed unreliable, and thus could not establish loss causation under the Securities Exchange Act of 1934. Shortly thereafter, the shareholders appealed the district court's decisions, arguing that the district court improperly rejected the Scorpion report as unreliable and insufficient to support loss causation.

The decision

On appeal, the Fourth Circuit affirmed the district court's denial of the shareholders' motion for reconsideration and to amend their complaint, holding that the shareholders did not plausibly allege that either the Scorpion report or IonQ's press release in response revealed new facts to the market.

The court rejected that a short-seller report that relies on anonymous sources and disclaims its own accuracy could reveal any alleged truth to the market.

The court first focused on whether a short-seller publication, like the Scorpion report, could "plausibly expose the truth of a company's fraud as needed to plead loss causation." Noting that whether a short-seller report alone can support allegations of loss causation is an issue of first impression for the Fourth Circuit, the court looked to two cases from the US Court of Appeals for the Ninth Circuit – *In re Nektar Therapeutics Sec. Litig.*, 34 F.4th 828 (9th Cir. 2022) and *In re BofI Holding, Inc. Sec. Litig.*, 977 F.3d 781 (9th Cir. 2020) – that found allegations based on short-seller reports insufficient to meet the pleading standard. Quoting *Nektar*, the court concluded that it is appropriately a "high bar that plaintiffs must meet in relying on self-interested and anonymous short-sellers" when attempting to plead loss causation.

While the court cautioned that it does not hold that a short-seller's report can never support the loss causation element, it found that the Scorpion report could not reveal any alleged truth to the market because it was written by anonymous, self-interested sources, relied on anonymous sources and explicitly disclaimed its accuracy. As the court emphasized, the Scorpion report's disclaimer was "particularly troubling because it gives Scorpion Capital the kind of editorial license that could allow it to say just about anything and cloak it in the imprimatur of truth in order to make a buck."

The court rejected the shareholders' attempt to bolster their allegation that the Scorpion report caused IonQ's stock to drop in value.

In dismissing the shareholders' first amended complaint, the district court noted that it could "not categorically conclude that a plaintiff can never plead report caused their losses," because "dditional factual allegations might turn the otherwise implausible claim that this sort of short-seller report exposed the truth to investors into a claim plausible enough to survive a motion to dismiss." In response, the shareholders proposed to add allegations citing four news articles published after the Scorpion report to show that the market believed the allegations in the report. The court noted that none of the articles actually credited the Scorpion report as revealing any truth, and only observed that IonQ's stock price fell after the report was published. The court held that, "aken together or separately, the articles do not credit the Report's *revelation* of IonQ's fraud as contributing to the decline in share price so much as they credit the *allegation* of fraud as a contributing factor," and cautioned that "correlation does not equal causation."

The court held that IonQ's press release cautioning investors about the Scorpion report was not a corrective disclosure.

Finally, the court considered the shareholders' allegation that, viewed in light of the allegations in the Scorpion report, IonQ's May 4 press release rebuking the report for its "important inaccuracies and mischaracterizations regarding IonQ's business and progress to date," and encouraging investors not to trade based on the report, was a corrective disclosure. The court found that while disclosures do not need to precisely identify the misrepresentation or omission and can emanate from any source, IonQ's press release could not be reasonably read to "relate back" to the report's claim in a way that revealed new facts about the alleged fraud. The court also noted that a company is not required to issue point-by-point rebuttals to a public allegation of fraud instead of a blanket denial to show that it is not acknowledging the truth of the alleged matter.

Takeaways

The Fourth Circuit opinion is an important win for defendants in securities class actions that piggyback off of short-seller reports, as the court decisively found that short-seller reports cannot form the basis of a securities fraud claim where the short-seller is anonymous, disclaims the accuracy of its opinions and is not corroborated by other sources. This decision is the first time that the Fourth Circuit has evaluated a case that principally hinges on the reliability of short-seller reports, like the Scorpion report, specifically stating: “We have not yet had occasion to consider whether a short-seller publication, like the Report, can plausibly expose the truth of a company’s fraud as needed to plead loss causation.” The Fourth Circuit’s decision joins many federal circuits that reject short-seller reports as insufficient to form the basis of a securities fraud claim at the pleadings stage, where the authors of the short-seller report are anonymous and self-interested.

The court’s opinion also addressed whether a company’s response to a claim of fraud can be a corrective disclosure, noting that, “n theory, we can envision a scenario where a third party exposes some unverified bombshell about a company and the company’s tacit *mea culpa* could function as a verification of that bombshell.” The court made clear, however, that a denial of a report’s accuracy is not an acknowledgment of the truth, and that companies are not required to address every single allegation made against them.

Contributors

Ryan Blair
Bio

Caitlin Munley
Bio

Vivienne Pismarov
Bio
