

Stockholders of One Company Lacks Standing for Securities Claim against Another Company; Soft-Opinions May Be Actionable

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The U.S. District Court for the Southern District of New York has held that shareholders of one company lack standing to bring a securities fraud class action lawsuit against a second company based on alleged misrepresentations regarding the value of the second company. In the same opinion, the district court also denied a motion to dismiss a class action lawsuit brought by shareholders of the second company, holding, *inter alia*, that "soft-opinions" may be actionable if made without genuine or reasonable belief as to their truth. *In re Nortel Networks Corp. Sec. Litig.*, No. 01 Civ. 1855 (RMB), 2003 WL 42015 (S.D.N.Y. Jan. 6, 2003).

Investors brought a securities fraud class action against a company (Company A) and its directors and officers alleging misrepresentations about the company's financial prospects. A second group of investors who held stock in a different company (Company B), which sold assets to Company A in exchange for stock in Company A, also brought a securities class action lawsuit against Company A and its directors and officers alleging that the value of their shares of Company B's stock were harmed by the alleged misrepresentation by Company A.

The court dismissed the claims by the shareholders of Company B, holding that they lacked standing to bring the lawsuit. The court based its decision on *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975), in which the U.S. Supreme Court held that "the plaintiff class for purposes of a private damage action under Section 10(b) and Rule 10b-5 [is] limited to actual purchasers and sellers of securities." Since the shareholders of Company B did not own shares in Company A, the district court held that they could not bring a claim against Company A and its directors and officers. The court did note, however, that the plaintiffs' claim was the "essence of a derivative claim" and that Company B might have its own cause of action against Company A.

In its opinion, the court also issued a ruling denying the motion to dismiss the lawsuit brought by the shareholders of Company A. The court rejected a variety of arguments by defendants concerning, among other things, materiality, scienter and the bespeaks caution doctrine. The court also held that purported "soft-opinions" or "puffery" were actionable, reasoning that "[s]tatements regarding projections of future performance may be actionable under Section 10(b) or Rule 10b-5 if they are worded as guarantees or are

supported by specific statements of fact, or if the speaker does not genuinely or reasonably believe them." Here, the investors alleged that the defendants did not genuinely or reasonably believe that the purportedly "soft" statements were true, and were in fact made with actual knowledge or with reckless disregard that they were false or misleading. The court found that those claims sufficiently alleged that the defendants had knowledge of facts or access to information contradicting their public statements and thus found that the purchasers of stock in Company A stated a sufficient claim for relief.

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