

Corporate & Financial Weekly Digest

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MetroPCS Escapes Securities Class Action

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Shareholders of MetroPCS Communications, Inc., the nation's fifth-largest wireless communications provider, filed a federal securities class action against the company and certain of its officers, alleging that defendants made materially false or misleading statements or omissions regarding the company's future prospects that artificially inflated the value of MetroPCS common stock in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. The U.S. District Court for the Northern District of Texas held that plaintiffs failed to adequately plead fraud and granted the defendants' motion to dismiss.

The objectionable statements related to: (1) the accuracy of the 2009 earnings guidance issued at the end of 2008; (2) the strength of MetroPCS's business model in a recessionary economy; (3) the impact of increased competition on the wireless communications business; and (4) the relationship between subscriber growth and attrition, particularly in light of a cell phone promotion that may have attracted disloyal customers who were inclined to leave after the promotion ended. Plaintiffs alleged that certain officers sold their shares prior to announcing adjusted corporate financials for 2009, causing the stock price to fall from \$18.85 to \$6.01 per share.

The court determined that plaintiffs did not adequately allege a strong inference of scienter. The defendants' sale of shares pursuant to preexisting Rule 10b5-1 trading plans undermined any inference of suspiciousness surrounding the timing or amount of the stock sales. In addition, the claim that the defendants had access to information that the cell phone promotion was increasing the rate of customer attrition, and thereby was not accretive to the company, was not alleged with any particularity as to any individual defendant. The court dismissed the plaintiffs' Amended Complaint and ordered plaintiffs to reimburse MetroPCS's court costs.

(Hopson v. MetroPCS Communications, Inc., et al., Civil Action No. 3:09-cv-02392 (N.D. Tex. March 25, 2011))

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