

Corporate & Financial Weekly Digest

Posted at 12:14 PM on January 7, 2011 by [Julie Pechersky](#)

District Court Grants Defendants' Motion to Dismiss Securities Fraud Claim

Co-authored by [Jonathan Rotenberg](#)

A district court granted defendants' motion to dismiss plaintiffs' claim for securities fraud on the ground that the complaint failed to plead fraud with particularity, as required by the Private Securities Litigation Reform Act of 1995 (PSLRA).

In September 2009, individual defendants allegedly represented to plaintiff Dupont, then president and chief executive officer of defendant Freight Feeder, that they had obtained investors in one of Freight Feeder's programs, and that they would need to assume control of Freight Feeder to secure additional venture capital. As a result, Dupont agreed to a buyout agreement pursuant to which he surrendered his interest in, and control of, Freight Feeder in exchange for an up-front payment of \$12,000 and monthly payments of \$12,000 in each of the 36 months following the closing of the buyout agreement.

Defendants only made three payments to Dupont under the buyout agreement, and after learning from defendant Bridges that Freight Feeder wanted to sell Freight Feeder's assets and retain its liabilities in an empty corporate shell, plaintiffs brought suit claiming, among other things, securities fraud on the part of defendants in connection with the buyout agreement. Defendants moved to dismiss the action on the grounds that, among other things, the district court lacked subject matter jurisdiction, because the complaint failed to state a cause of action for securities fraud.

In granting defendants' motion to dismiss, the district court found that, contrary to the pleading standards set forth in the PSLRA, the complaint did not contain any alleged misrepresentations of the defendants that include the time, place and identity of the speaker, or the content of the alleged misrepresentation. The district court also held that the complaint failed to plead scienter with the requisite particularity. (*Dupont v. Freight Feeder Aircraft Corp.*, No. 4:10-CV-239-A, 2010 WL 5093159 (N.D.Tex. Dec. 7, 2010))

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC