

Corporate & Financial Weekly Digest

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Eleventh Circuit Affirms Dismissal of Securities Fraud Complaint Against Mortgage Lender

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Stockholder plaintiffs brought a purported class action against HomeBanc Corporation and certain of its officers and directors alleging that the mortgage and lending company committed securities fraud by improperly concealing numerous purchases of subprime mortgage securities, which allegedly caused substantial losses when the company collapsed during the housing and subprime market crash.

The district court granted the defendants' motion to dismiss the complaint because, among other things, plaintiffs' complaint failed to adequately plead scienter.

On appeal, the U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's dismissal ruling. Significantly, the court noted that while the complaint alleged that the defendants expressed "mistaken confidence in the company's financial well-being" and "engaged in business practices that contributed to HomeBanc's demise," the facts alleged do not give rise to a strong inference that defendants knew that their public statements were fraudulent or were reckless in light of their actual knowledge.

The Eleventh Circuit expressed agreement with the district court's assessment that rather than suggesting that the defendants knew their statements were fraudulent, the stronger inference arising from the complaint's allegations was that the defendants "simply failed to predict the eventual collapse of the housing and subprime mortgage market, and, as a result, were ill-prepared to respond when those markets crashed." (*Kadel v. Flood*, 2011 WL 2015379 (11th Cir. May 24, 2011))

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