

Corporate & Financial Weekly Digest

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Sixth Circuit Finds That Mutual Fund Class Action Is Preempted By SLUSA

Shareholders in three mutual funds issued by Morgan Keegan Select Fund, Inc. (the Funds) filed a state court class action alleging that the Funds' officers, directors, and affiliates took unjustified risks in allocating the Funds' assets and then concealed those risks from shareholders, causing the shareholders to retain their shares while the shares dropped in value. The complaint asserted only state law causes of action. The U.S. District Court for the Western District of Tennessee ruled that the Securities Litigation Uniform Standards Act of 1998 (SLUSA) precluded the plaintiffs' class action and dismissed their claims with prejudice.

The plaintiffs argued on appeal that their claims fell within SLUSA's "Delaware carve-out" permitting many tender offer litigations to proceed as state court class actions. The U.S. Court of Appeals for the Sixth Circuit rejected plaintiffs' argument because the complaint alleged that the defendants' conduct caused the plaintiffs to hold or retain their shares, while the text of the SLUSA carve-out applies only to claims that "involve...the purchase or sale of securities by the issuer...exclusively from or to holders of equity securities of the issuer." The plaintiffs' "holder" claims did not allege any purchase or sale within the meaning of the SLUSA carve-out.

The plaintiffs further argued that SLUSA bars only claims that require fraud as an essential or necessary element, and that their complaint should be permitted to proceed because it included causes of action that did not require fraud or misrepresentation (e.g., breach of fiduciary duty). The Sixth Circuit rejected this argument, finding that SLUSA bars actions that involve allegations of misrepresentations or omissions in connection with the purchase or sale of securities, regardless of whether such allegations can be considered essential elements of any individual cause of action.

Atkinson, MD, et al. v. Morgan Asset Mgmt, Inc., No. 09-6265, 2011 WL 3926376 (6th Cir. Sep. 8, 2011).