

Corporate & Financial Weekly Digest

Posted at 12:03 PM on March 25, 2011 by [Bruce M. Sabados](#)

District Court Dismisses Complaint for Failure to Adequately Plead Scienter

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Plaintiff asserted a securities class action complaint against Nextwave Wireless Inc., as well as certain of its officers and directors. The complaint alleged that defendants made 17 statements that were false and misleading to investors over an extended period of time, and that as a result defendants were liable under Rule 10(b) of the Securities Exchange Act.

The court had dismissed plaintiff's prior complaint and directed plaintiff to file an amended pleading. Defendants moved to dismiss the amended complaint, arguing that the complaint failed to provide a plain and concise statement of plaintiff's claims as required by the Federal Rules of Civil Procedure, and because the complaint failed to adequately plead scienter under the Private Securities Litigation Reform Act of 1995.

In granting the motion, the district court criticized plaintiff for including in the complaint large excerpts of defendants' public statements with no indication of what particular statements within those excerpts plaintiff considered false and misleading. The court also found that plaintiff failed to allege how the statements of various confidential witnesses on which plaintiff relied amounted to scienter. The court allowed plaintiff one additional opportunity to amend the complaint, but cautioned that "if the complaint is again a chore to piece together, it will be dismissed with prejudice." (*Lifschitz v. Nextwave Wireless Inc., et al.*, 2011 WL 940918 (S.D. Cal. March 16, 2011))

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