

UNITED STATES COURT OF APPEALS BUILDING
JOHN MINOR WISDOM
FIFTH CIRCUIT

Fifth Circuit Securities Litigation Quarterly

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SHEARMAN & STERLING

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Introduction



Welcome to the final 2023 edition of Shearman & Sterling's Fifth Circuit Securities Litigation Quarterly. As public companies and financial institutions continue to migrate to Texas, our Texas-based securities litigation team continues to monitor all developments and help our clients navigate the unique landscape for federal securities litigation in the Fifth Circuit.

In our Q4 2023 edition, we cover a new case filing, a settlement and two dismissal-related opinions.

New Securities Class Action Filing & Settlement

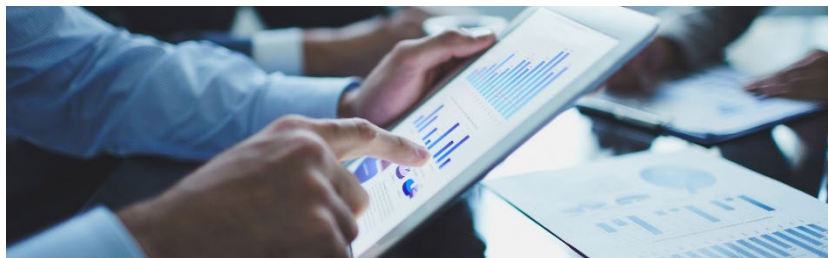


MICROVAST(S.D. TEX., 4:23-CV-04565, FILED DEC. 5, 2023)

Filed on behalf of a class of persons who purchased Microvast Holdings securities between October 19, 2022, and November 20, 2023

Asserts claims under the Securities Exchange Act of 1934

Alleges Defendants “made false and/or misleading statements and/or failed to disclose to investors: (1) that there was a reasonable likelihood that Microvast would not be awarded [a proposed \$200 million grant from the Department of Energy (the “Grant”)] after due diligence was performed; (2) that negotiations had ceased and the Grant rescinded; (3) that the Company misrepresented the nature and profitability of its businesses and partnerships; and (4) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.”



REATA PHARMACEUTICALS(E.D. TEX., 4:21-CV-00987)

\$45 million settlement of case asserting claims under the Securities Act of 1933 and Securities Exchange Act of 1934.

Case initially filed on December 20, 2021. Securities Act claims and additional defendants added in a consolidated amended complaint filed on June 21, 2022. Case resolved prior to a ruling on defendants’ fully-briefed motion to dismiss. Motion for preliminary approval of settlement filed on November 3, 2023.

Decisions of Note

Weatherford International: Fifth Circuit Affirms Dismissal for Failure to Plead Scierter

Core Scientific: W.D. Tex. Grants-in-Part Motion to Dismiss Claims Against Directors and Officers of Bankrupt Digital Asset Mining Company



Utah Retirement Sys. v. McCollum
(Weatherford International),
2023 WL 8649878 (5th Cir. Dec. 14, 2023)

- Fifth Circuit affirmed dismissal of complaint for failure to adequately plead scienter.
- Plaintiffs alleged that defendant oilfield services company and its executives made misstatements about the company’s cost-cutting measures and ability to address its debt.
- The Fifth Circuit found that Plaintiffs’ proposed inference – that defendants knew that bankruptcy was inevitable – was not at least as compelling as the non-fraudulent inference that Weatherford was “trying to fix its issues but was continually stymied by a weak oil market.”
- The Fifth Circuit further found “meritless” the argument that defendants were motivated to commit fraud by the need for time to negotiate a management incentive plan for the reorganized company. The court reasoned that these types of incentive compensation are far too common to form the basis for an inference of fraud and lacked factual allegations tying the alleged motive to the alleged misstatements.

Mei Pang v. Levitt (Core Scientific),
No. 1:22-cv-01191, 2023 U.S. Dist. LEXIS 227786
(W.D. Tex., Dec. 20, 2023)

- Judge Ezra granted-in-part and denied-in-part Defendants' motion to dismiss.
- Plaintiffs claimed that current and former directors and officers of Core Scientific made misstatements and omissions regarding the company's decision to impose power cost pass-through charges onto its customers.
- The court found that a number of challenged statements were not misleading because they did not speak to the information that Plaintiffs claim was omitted or because the company was not required to predict future actions by third parties.
- The court found, however, that Plaintiffs adequately alleged that a statement about customers generally being billed on a fixed basis was misleading in light of alleged plans to divert from fixed rates.
- The court also rejected Plaintiffs' argument that Defendants knew of a "known trend or uncertainty" that required disclosure in the company's registration statement.
- Other statements were dismissed for failure to adequately allege scienter or loss causation.
- Defendants have filed a motion for reconsideration as to the one statement that survived the motion to dismiss.

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