Cahill

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# Fourth Circuit Limits Plaintiffs' Ability to Use Short Seller Publications to Plead Federal Securities Fraud Claims

On April 8, 2025, the Fourth Circuit held that a short seller publication cannot plausibly expose the truth of a company's fraud—as needed to plead loss causation with "sufficient specificity"—if the short seller publication contains disclaimers about accuracy and financial motivations. The Fourth Circuit's decision in *Defeo* v. *IonQ, Inc.* adds to recent decisions in the Ninth and Eleventh Circuits that limit plaintiffs' ability to use short seller publications to plead various federal securities fraud claims.

## I. Factual and Procedural Background

IonQ, Inc. ("IonQ") is a publicly traded quantum computing company founded by two professors in 2015.[1] In October 2020, the company unveiled a new 32-qubit quantum computing system and promoted its "revolutionary" capabilities.[2] Although the system was not commercially available at the time, the announcement caused a strong market reaction in a subsection of technology media.[3] The following month, dMY Technology Group, Inc. III ("dMY"), a publicly traded special purpose acquisition company, approached IonQ to discuss a potential merger.[4] After extensive due diligence and an overwhelming majority of dMY's shareholders voting in approval, the newly merged company began publicly trading as IonQ on October 1, 2021.[5]

On May 3, 2022, Scorpion Capital LCC ("Scorpion") published the Scorpion Report (the "Report") online, in which Scorpion made various allegations against IonQ based on public information and interviews with unnamed former IonQ employees, customers, and quantum computing experts.[6] Specifically, the Report claimed that (1) IonQ's purported 32-qubit quantum computing system did not exist; (2) IonQ's statements about "rapid miniaturization"—the process of decreasing the size of its systems to make them commercially practicable—were false; (3) IonQ misled investors about the efficacy of its computers by mischaracterizing error rates; and (4) IonQ fraudulently inflated its revenue and financial statements leading up to its public listing through "phony related-party deals."[7] The Report contained many prefatory disclosures, including that Scorpion maintained a short position in IonQ stock and thus

[1] *Defeo* v. *IonQ, Inc.*, 134 F.4th 153, 157 (4th Cir. 2025).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.* at 158.

[7] *Id.*

stood "to realize significant gains if the price of its stock, bonds, options, and/or other securities decline or change."[8] Lastly, Scorpion disclosed that although its opinions were "held in good faith," it could not confirm the accuracy of its source material, and its quotations from experts "may be paraphrased, truncated, and/or summarized solely at [its] discretion."[9]

The next day, on May 4, IonQ published a press release refuting the Report's claims and highlighting that Scorpion admitted in the Report that it was short IonQ's stock.[10] On May 12, 2022, IonQ's founders issued a longer release stating that the Report was "intended to manipulate the stock price of IonQ," and that it was "riddled with disinformation."[11] From the Report's release on May 3, 2022, until IonQ's second press release on May 12, 2022, IonQ's stock price declined significantly.[12]

## District Court Proceedings

On May 31, 2022, a group of shareholders filed a putative class action, and subsequently an amended complaint, on behalf of investors who bought IonQ stock between March 7, 2021, and May 2, 2022.[13] The suit was brought against IonQ and various executives (collectively, the "Defendants") and alleged violations of the Securities Exchange Act of 1934, including Section 10(b), Section 14(a), and Section 20(a).[14] Mirroring allegations in the Report, the plaintiffs' first amended complaint alleged that IonQ failed to disclose four material facts about its business projections, including that (1) it did not have a 32-qubit quantum computing system; (2) its systems were not close to commercial miniaturization; (3) its systems' error rates were worse than it claimed; and (4) a threefold increase in its contract bookings before its merger with dMY came from a single transaction with an institutional client.[15] Once the Report unveiled this 'truth' to the market, the complaint alleged, IonQ's stock fell, resulting in significant financial losses to the plaintiffs.[16]

On September 28, 2023, based on Defendants' motions, the U.S. District Court for the District of Maryland dismissed the plaintiffs' first amended complaint with prejudice for failure to state a claim under Fed. R. Civ. P. 12(b)(6).[17] The district court concluded that the plaintiffs had failed to allege that the Report and its confidential witnesses were reliable sources, and that the plaintiffs thus failed to allege necessary elements of a Section 10(b), Section 14(a), or Section 20(a) claim.[18] The district court further held that even if it considered the allegations from the Report and confidential witnesses, the plaintiffs still failed to sufficiently plead loss causation—a necessary element in both Section 10(b) and Section 14(a) claims—because they did not plausibly allege that either the Report or the May 4

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[8] *Id.*

[9] *Id.* at 158-59.

[10] *Id.* at 159.

[11] *Id.*

[12] *Id.*

[13] *See* Class Action Complaint, *Leacock* v. *IonQ, Inc.*, No. 22-cv-01306 (D. Md. May 31, 2022); Consolidated Amended Class Action Complaint ¶ 1, *Leacock* v. *IonQ, Inc.*, No. 22-cv-01306 (D. Md. Nov. 22, 2022).

[14] Consolidated Amended Class Action Complaint ¶ 1, 23-33, *Leacock* v. *IonQ, Inc.*, No. 22-cv-01306 (D. Md. Nov. 22, 2022).

[15] *See generally id.* ¶¶ 156-224.

[16] *Id.* ¶ 15.

[17] *Leacock* v. *IonQ, Inc.*, 2023 WL 6308045, at *15 (D. Md. Sept. 28, 2023).

[18] *Id.*

press release "revealed new facts suggesting defendant[s] perpetrated fraud on the market."[19] The plaintiffs' Section 20(a) claim was predicated on their Section 10(b) and Section 14(a) claims, and thus also failed.[20]

Following the dismissal, the plaintiffs filed a motion for reconsideration under Fed. R. Civ. P. 59(e) and a motion for leave to file a second amended complaint under Fed. R. Civ. P. 15(a).[21] The plaintiffs also submitted a proposed second amended complaint seeking to cure the pleading deficiencies identified by the district court, in which the plaintiffs cited to four new articles to support the link between the Report and IonQ's stock price declining.[22] The district court denied both motions, finding that regardless of the reliability of the plaintiffs' sources and the new allegations relevant to loss causation, the plaintiffs would still fail to adequately plead loss causation for their Section 10(b) and Section 14(a) claims and that "amendment would be futile."[23] The plaintiffs appealed on July 24, 2024.[24]

## II. The Fourth Circuit's Decision

On appeal, the plaintiffs asked the Fourth Circuit to vacate the district court's orders, arguing that they had sufficiently alleged loss causation in their first amended complaint and that any deficiencies would have been cured by the proposed second amended complaint.[25] On April 8, 2025, the Fourth Circuit affirmed the district court's dismissal.[26]

Circuit Judge G. Steven Agee, writing for the unanimous three-judge panel, narrowed the issue on appeal to determining whether the plaintiffs adequately pleaded loss causation in their second amended complaint since it served as the basis of the district court's denial of the plaintiffs' motion for leave to amend.[27] In the Fourth Circuit, loss causation must be pleaded with "sufficient specificity," a standard "largely consonant with Fed. R. Civ. P. 9(b)'s particularity requirement."[28] Under the "sufficient specificity" standard, a plaintiff must "plausibly and with sufficient specificity" allege (1) the "exposure of the defendant's misrepresentation or omission"; and (2) that "such exposure resulted in the decline of the defendant's share price."[29]

Focusing primarily on the first step of exposure, the Fourth Circuit held that a plaintiff must point to "*new* facts in the market that reveal the truth behind a company's fraud . . . because if investors already know the truth, false statements won't affect the price."[30] The Fourth Circuit explained that there are three ways of showing such exposure, including (1) a "corrective disclosure theory," in which the company itself discloses that it perpetrated a fraudulent material misrepresention or omission on the market; (2) a "materialization of a concealed risk theory," in which a third party exposes the company's fraud; or (3) an "amalgam" of the first two, in which the company's fraud is exposed

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[19] *Id.* at *21-24, 38.

[20] *Id.* at *39.

[21] Plaintiffs' Motion for Post Judgment Relief to Amend the Consolidated Amended Complaint, *Leacock* v. *IonQ, Inc.*, No. 22-cv-01306 (D. Md. Oct. 26, 2023).

[22] *Id.* ¶ 234-37.

[23] *Leacock* v. *IonQ, Inc.*, 2024 WL 3360647, at *9 (D. Md. July 10, 2024) [hereinafter *IonQ II*].

[24] Notice of Appeal, *Leacock* v. *IonQ, Inc.*, No. 22-cv-01306 (D. Md. July 26, 2024).

[25] Appellant's Opening Brief at 32, 38, *Defeo* v. *IonQ, Inc.*, No. 24-1709 (4th Cir. Sept. 9, 2024).

[26] *Defeo*, 134 F.4th at 157.

[27] *Id.* at 161.

[28] *Id.*

[29] *Id.* at 161-62.

[30] *Id.* at 162.

from a variety of sources.[31] The plaintiffs argued that IonQ's alleged misrepresentation of its financial projections was revealed through an amalgam of exposures including the Report and IonQ's press release the day after the Report was published.[32]

As to the Report, the court noted that the question of whether a short seller publication can satisfy the exposure requisite in pleading loss causation was a matter of first impression in the Fourth Circuit.[33] Looking to other jurisdictions, the court found the Ninth Circuit's jurisprudence persuasive.[34] Adopting its sister circuit's reasoning, the Fourth Circuit held that there is a "high bar" for plaintiffs relying on "self-interested and anonymous short sellers" when pleading loss causation.[35] However, similar to its sister circuit, the Fourth Circuit held that there was no absolute bar on a short seller's report supporting loss causation.[36] Instead, the Fourth Circuit stated that "anonymous and self-interested short sellers who disavowed any accuracy" render their reports inadequate for supporting a loss causation pleading.[37]

Applying this framework to the facts, the Fourth Circuit held that the plaintiffs failed to plausibly allege that the Report revealed the truth of IonQ's alleged fraud.[38] The Fourth Circuit explained that "when a short seller makes the kinds of disclaimers the Report does here, its potential evidentiary value evaporates."[39] Similar to the district court, the Fourth Circuit also rejected the plaintiffs' attempt to bolster their allegations in their proposed second amended complaint by citing to four new articles to support the link between the Report and IonQ's stock price declining.[40] The court explained that the articles do not support the inference that the *revelation* of IonQ's alleged fraud led to a decline in share price, rather that the *allegation* of fraud did.[41] In other words, the court clarified that the plaintiffs' new allegations demonstrated a correlation rather than causation, which is insufficient to support loss causation.[42]

Finally, as to IonQ's May 4 press release, the Fourth Circuit rejected the plaintiffs' contention that IonQ exposed a new truth to the market by allegedly failing to dispute or acknowledge the claims in the Report.[43] The court held that when considering IonQ's May 4 release in its entirety, the plaintiffs' characterization was inaccurate.[44] The court found that IonQ highlighted the "important inaccuracies and mischaracterizations regarding [its] business and

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[31] *Id.*

[32] *Id.*

[33] *Id.* at 162-63.

[34] *Id.* at 163. The Ninth Circuit in *In re BofI Holding, Inc. Securities Litigation* held that anonymous blog posts from short sellers, with financial incentive to convince investors to sell and disclaimers regarding the accuracy of the information, could not constitute corrective disclosures for purposes of pleading loss causation in a securities fraud case. 977 F.3d 781, 797 (9th Cir. 2020). The Ninth Circuit reasoned that due to the disclaimers of inaccuracy, it was "not plausible that the market reasonably perceived these posts as revealing the falsity of [the company's] prior misstatements, thereby causing . . . drops in the [company's] stock price." *Id.*

[35] *Defeo*, 134 F.4th at 163 (citing *In re Nektar Therapeutics Sec. Litig.*, 34 F.4th 828, 839 (9th Cir. 2022)).

[36] *Id.* (citing *In re Genius Brands Int'l, Inc. Sec. Litig.*, 97 F.4th 1171, 1186-87 (9th Cir. 2024)).

[37] *Id.* (citing *In re Nektar Therapeutics*, 34 F.4th at 840).

[38] *Id.*

[39] *Id.* at 164.

[40] *Id.*; *IonQ II*, 2024 WL 3360647, at *12 ("[N]one of the articles the plaintiffs cite in the proposed second amended complaint endorses the Scorpion Report's claims as true or even attributes the drop in share price to investors' beliefs that the claims were true.").

[41] *Defeo*, 134 F.4th at 164.

[42] *Id.*

[43] *Id.* at 165.

[44] *Id.*

progress," noted Scorpion's short position on IonQ stock, and advised investors not to make decisions based on the Report.[45] As a result, the Fourth Circuit held that the plaintiffs also failed to plausibly allege that IonQ's press release constituted a "corrective disclosure" that could support the exposure component of a loss causation pleading.[46]

## III. Conclusion

The Fourth Circuit's decision in *Defeo*, which adopted the Ninth Circuit's "high bar" for plaintiffs' ability to use short seller publications to plead loss causation, adds to a growing consensus among the circuits to limit a readily available tool for plaintiffs to support their federal securities fraud claims. The Eleventh Circuit has recently also held that the repackaging of public information by short sellers does not constitute a corrective disclosure.[47]

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Kiersten Fletcher (Partner) at 212.701.3365 or kfletcher@cahill.com; John MacGregor (Partner) at 212.701.3445 or jmacgregor@cahill.com; Paul Joseph (P.J.) Austin (Associate) at 212.701.3214 or paustin@cahill.com; or email publicationscommittee@cahill.com.

[45] *Id.*

[46] *Id.* at 165-66.

[47] *MacPhee* v. *MiMedx Grp., Inc.*, 73 F.4th 1220, 1246 (11th Cir. 2023) (citing *Meyer* v. *Greene*, 710 F.3d 1189, 1199 (11th Cir. 2013)).