
Second Circuit Heightens Standard for Establishing Corporate Scier in Securities Fraud Cases

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The lynchpin of many securities fraud cases is whether a plaintiff can establish with particularity that a defendant acted with scienter (i.e., fraudulent intent). Where the defendant is an individual person, this question may be relatively straightforward. Where the defendant is a corporation, however, it can be more complicated: a plaintiff must demonstrate the misconduct was not the result of mismanagement of lower-level employees but rather the *corporation's* fraudulent conduct.

On May 27, 2020, in *Jackson v. Abernathy*, the United States Court of Appeals for the Second Circuit, in a *per curiam* decision, clarified the standard for pleading corporate scienter. Specifically, a plaintiff must adequately plead that the individuals who made or disseminated the alleged misstatements were responsible for making or disseminating the corporations' alleged misstatements and either acted with the requisite fraudulent intent or that the statement was so dramatic that fraudulent intent may be inferred. The plaintiff in *Jackson* failed to meet that exacting standard because he relied solely on the testimony of lower-level employees of the defendant corporations in which those employees raised concerns about the accuracy of some of the defendant corporations' alleged misstatements. The Second Circuit held that was insufficient to plead corporate scienter because the plaintiff failed to adequately plead that the corporate officials actually responsible for making or disseminating the corporations' alleged misstatements knew of those employees' alleged concerns. The decision heightens the already heavy burden plaintiffs have in securities fraud cases in pleading that corporations acted with the requisite scienter.

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