Pleading Fraud With Particularity

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Widespread losses suffered by many investors during the financial crisis have spawned more than a few fraud claims based upon broadly alleged misconduct affecting many investments or transactions, and even entire lines of business. Complaints have sought to portray defendants as rife with fraud, and invite an inference that plaintiff's losses are an inescapable part of that portrait. The loosely proffered connection to the plaintiff's own loss, however, has in turn led defendants to argue that such widespread claims lack a particular connection to the plaintiff's investment even if they are assumed to be true. Under Federal Rule of Civil Procedure 9(b), plaintiffs must allege fraud with particularity—a standard traditionally met by alleging the specifics of "who, what, when, where and how." Recent cases suggest opportunities for successful arguments on both sides of this contentious issue.

Attorneys

- David R. Owen
- Adam S. Mintz