

## Corporate & Financial Weekly Digest

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### **False Confidential Witness Information Warrants Reconsideration and Dismissal in Securities Class Action**

The U.S. District Court for the Northern District of Illinois granted a motion for reconsideration pursuant to Rule 54(b) of the Federal Rules of Civil Procedure on the ground that the court's previous order denying a dismissal motion relied on false information concerning a confidential witness's position and personal knowledge.

Stockholder plaintiffs asserting Securities Exchange Act claims alleged that The Boeing Company made misrepresentations about the testing and delivery schedule for the 787 Dreamliner commercial aircraft. Plaintiffs' complaint relied on allegations by a confidential witness who was alleged to be a Boeing employee with personal knowledge that adverse test results were circulated to senior Boeing executives.

After the dismissal motion was denied, defense counsel learned through an interview that the confidential witness was not a Boeing employee, had no personal knowledge of test results, had never met plaintiffs' counsel prior to being deposed, and was never shown the allegations attributed to him in the complaint.

The court concluded that, under Rule 54(b), it may consider evidence of manifest factual errors for the limited purpose of determining whether orders were procured by fraud, carelessness by counsel, or by the court's own misconception of the facts. The court granted the motion to reconsider and dismiss the complaint because the inaccurate information provided by the confidential witness could have been uncovered through a reasonable investigation by plaintiffs' counsel. (*City of Livonia Employees' Retirement System v. The Boeing Company*, C.A. No. 09 C 7143 (N. D. Ill. Mar. 7, 2011))

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