

## Corporate & Financial Weekly Digest

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### **Court Dismisses Securities Fraud Claim for Failure to Allege Economic Loss**

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Notwithstanding a high level corporate officer's allegedly duplicitous conduct, the U.S. District Court for the Western District of Pennsylvania recently dismissed a securities fraud claim based on the plaintiff's failure to allege economic loss attributable to the alleged misrepresentation of the defendant. The plaintiff, a corporation that sells graphite, brought this action against its former president, alleging, among other things, that the defendant had violated Section 10(b) of the Securities Exchange Act. Specifically, the plaintiff alleged that the defendant had made material misrepresentations in his nondisclosure, noncompetition and nonsolicitation agreements, which had induced the plaintiff to issue to the defendant shares of common stock as a part of an employee stock purchase agreement. The defendant operated the company for several years without disclosing that he had, all the while, not actually resigned from his former employer, a competitor of plaintiff's in the graphite sales industry. The Court classified this 10(b) claim as a "non-typical" one, i.e., one where the allegations do not involve the price of a publicly-traded security. The Court agreed with the defendant that the plaintiff had failed to allege that it had suffered any economic loss, and by extension, loss causation, i.e., economic loss attributable to the alleged misrepresentation of the defendant, both of which are necessary to state a claim for securities fraud. As such, the court dismissed the securities fraud claim.

*Specialty Graphite Services, Inc. v. Chiodo*, No. 2:11-cv-1438 (W.D. Pa. Jan. 19, 2012).

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