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## Attendance at Executive Committee Meetings Insufficient to Satisfy Group Pleading Doctrine

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The U.S. District Court for the Southern District of New York recently granted defendants' motions to dismiss a consolidated class action asserting claims for securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 brought by shareholders of Celestica, Inc., a Canadian electronics corporation, against the company and its former officers, as well as against Onex Corporation, the largest controlling shareholder of Celestica, and Onex's CEO (together, the Onex defendants) based on, among other things, the plaintiffs' failure to plead fraud with the specificity required by Rule 9(b) of the Federal Rules of Civil Procedure.

Plaintiffs alleged that defendants disseminated materially false and misleading statements concerning Celestica's earnings, profitability and financial future during conference calls and in publicly filed financial documents, thereby artificially inflating Celestica's stock price to the ultimate detriment of its shareholders. In asserting the allegations of fraud against the Onex defendants, plaintiffs attempted to rely upon the "group pleading doctrine" to avoid application of Rule 9(b)'s requirement that a plaintiff identify the speaker of a purportedly fraudulent statement. The group pleading doctrine allows plaintiffs to attribute misleading statements to the group of defendants who were responsible for creating, reviewing or approving the purportedly false statements prior to their dissemination.

In support of their argument for applying the group pleading doctrine, plaintiffs asserted that the Onex CEO's regular attendance at executive committee meetings and the Onex defendants' significant holdings of Celestica securities enabled the Onex defendants to effectively control the company. As a result, the plaintiffs argued that the Onex defendants were sufficiently involved in the everyday business of the company to assume liability for any corporate misstatements. However, the court found these allegations did not establish that the Onex defendants had a "direct day-to-day involvement in Celestica's business affairs and operations necessary for attribution" of the statements to them. Thus, the court dismissed the complaint because the plaintiffs failed to allege the direct connection between the Onex defendants and the alleged misstatements necessary for application of the group pleading doctrine. (*In re Celestica Inc. Securities Litigation*, 1:07-cv-00312 (S.D.N.Y. October 14, 2010))