

Corporate & Financial Weekly Digest

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Supreme Court Rejects Statistical Significance as Bright-Line Rule for Materiality

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The U.S. Supreme Court found that allegations of "statistical significance" were not a requirement for pleading materiality in a securities fraud action arising from a pharmaceutical company's alleged failure to disclose reports linking its cold remedy with loss of smell.

Plaintiff-shareholders alleged in the complaint that statements made by defendant Matrixx relating to revenues and product safety were misleading in light of reports that Matrixx had received, but did not disclose, concerning consumers who had lost their sense of smell after using Matrixx's Zicam cold remedy. Matrixx moved to dismiss the complaint, arguing, among other things, that plaintiff had failed to plead the elements of a material misstatement.

The district court granted defendants' motion to dismiss, finding that plaintiff had not alleged a statistically significant correlation between the use of Zicam and smell loss so as to make failure to publicly disclose the reports a material omission. The U.S. Court of Appeals for the Ninth Circuit reversed, holding that a materiality determination requires "delicate assessments" of what a "reasonable shareholder" would infer from a given set of facts, and found that the district court had erred by requiring that the plaintiff specifically allege the statistical significance of the reports to establish materiality.

The Supreme Court affirmed. It reasoned that Matrixx's argument relied upon the flawed premise that statistical significance is the only reliable indication of causation. The Court found that medical professionals and researchers do not limit the data they rely on only to statistically significant evidence, and courts frequently permit expert testimony on causation based upon evidence other than statistical significance. On this basis, the Court concluded that in certain cases reasonable investors could view non-statistically significant data as material, and thus no such allegation should be required to plead materiality. (*Matrixx Initiatives, Inc. v. Siracusano*, 2011 WL 977060 (U.S. March 22, 2011))

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