

Bond Case Briefs

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SECURITIES - NEW YORK

Wilbush v. Ambac Financial Group, Inc.

United States District Court, S.D. New York - September 5, 2017 - F.Supp.3d - 2017 WL 4125364 - Fed. Sec. L. Rep. P 99, 868

Shareholder brought derivative shareholder action, individually and on behalf of all others similarly situated, against holding company whose subsidiaries provided financial guarantee products and other financial services, and its officers, asserting claims for securities fraud in violation of § 10(b) and Rule 10b-5, based on allegations that company and its officers engaged in extensive and pervasive fraud to conceal the company's true credit risk and loss exposure to more than \$10 billion in Puerto Rican bonds the company insured.

Company and officers moved to dismiss.

The District Court held that:

- Shareholder failed to adequately plead actionable misstatements or omissions;
- Shareholder failed to allege motive for fraud as required to allege scienter; and
- Shareholder failed to allege misbehavior or recklessness sufficient to give rise to strong inference of scienter.

Shareholder's allegation that company reported net par outstanding for the company's Puerto Rican bonds of approximately \$2.4 billion, exclusive of nearly \$8 billion of additional exposure the company had for those bonds related to interest, was insufficient to plead actionable misstatements or omissions as required to state claim for securities fraud in violation of § 10(b) or Rule 10b-5, under heightened pleading requirements of the Private Securities Litigation Reform Act (PSLRA). Shareholders did not allege that company violated a Generally Accepted Accounting Principle (GAAP) or industry standard, and company disclosed principal and interest exposure on its Puerto Rican bonds in presentations conspicuously located on its websites.

Shareholders failed to adequately plead that company's statement, in its quarterly Securities and Exchange Commission (SEC) filing, stating that, in its historical experience, losses in the public finance portfolio had been contained, with most of its adversely classified credits resolving without loss to the company, was false and misleading as required to sufficiently state claim for securities fraud in violation of § 10(b) and Rule 10b-5 under heightened pleading requirements of the Private Securities Litigation Reform Act (PSLRA); statement constituted disclosure of accurate historical data.

Shareholder failed to adequately plead that company's categorization of its Puerto Rican bonds as "BIG (Below Investment Grade)," was misleading because the category was so broad as to imply little risk exposure, and thus failed to sufficiently state claim for securities fraud in violation of § 10(b) and Rule 10b-5 under heightened pleading requirements of the Private Securities Litigation Reform Act (PSLRA); company's definition of BIG reflected industry-wide usage.

Shareholder's allegations that company's officer's sought to conceal its true credit risk and loss

exposure in order to reclaim company's credit rating was insufficient to allege a motive for fraud as would give rise to strong inference of scienter required under Private Securities Litigation Reform Act (PSLRA) heightened pleading requirements to state claims alleging securities fraud in violation of § 10(b) and Rule 10b-5.

Allegedly suspicious resignation of three of company's officers did not constitute evidence of conscious misbehavior or recklessness sufficient to give rise to a strong inference of scienter required under Private Securities Litigation Reform Act (PSLRA) heightened pleading requirements for claims alleging securities fraud in violation of § 10(b) and Rule 10b-5, where resignations did not occur at or about the time that the company's alleged fraud was disclosed.