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Short Sellers and Securities Suits: What Companies Need to Know

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Introduction

In 2025, more than 200 federal securities class actions were filed in the United States. See "Securities Class Action Filings: 2025 Year in Review," CORNERSTONE RESEARCH (Jan. 2026). The total settlement amount stemming from these types of suits stood in the billions. Many of these cases arise out of allegations in short seller reports. This Article explores several topics relevant to this trend.

I. Securities Class Actions Overview

Securities class actions are generally filed by plaintiffs asserting violations of the federal laws under the Securities Act of 1933 (the Securities Act), 15 U.S.C. §§77a–77mm, and/or the Securities and Exchange Act of 1934 (the Exchange Act), 15 U.S.C. §§78a–78rr. Claims under Section 11 and 12 of the Securities Act seek damages for material misrepresentations or omissions in registration statements (Section 11) and prospectuses (Section 12). 15 U.S.C. §§77k., 77l(a)(2). Claims under Section 10(b) of the Exchange Act and Rule 10b-5 seek damages for material misrepresentations or omissions in connection with the purchase or sale of a security, which are made with scienter and cause plaintiffs' economic loss. See 15 U.S.C. §78j; 17 CFR §240.10b-5.

II. Short Sellers' Impact on Securities Suits

A. What is a Short Seller?

Short sellers are generally investors who borrow a security, sell it, and plan to repurchase it later at a lower price. Short sellers bet on a security's price dropping, leading to profit on their repurchase. Some short sellers issue short-seller reports, which can

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coincide with stock price movement. Class action plaintiffs often rely on these reports to plead the various elements of securities class actions, particularly those brought under the Exchange Act.

B. Short-Seller Reports as an Impetus for Securities Suits and Investigations

Short-seller reports frequently lead to the filing of securities class actions and also may lead to government action, such as SEC and DOJ investigations. *Crivellaro v. Singularity Future Tech. Ltd.,* 2024 U.S. Dist. LEXIS 228061, at *7–8 (E.D.N.Y. Dec. 17, 2024) (noting that a DOJ, SEC, and FINRA investigation commenced after a short-seller report's publication); *Longo v. Osi Sys.*, 2021 U.S. Dist. LEXIS 63773, at *36 (C.D. Cal. Mar. 31, 2021) (noting that a DOJ and SEC investigation commenced after a short-seller report's publication). These reports have also been the subject of company internal investigations. See, e.g., *Saskatchewan Healthcare Emp.'s Pension Plan v.*

KE Holdings Inc., 718 F. Supp. 3d 344, 389 (S.D.N.Y. 2024) (noting that an internal investigation was undertaken shortly after a short-seller report's publication). These investigations can be costly, including management time and advisor fees.

III. Defenses to Short-Seller Reports in Securities Class Actions

Defendants in securities class actions have many defenses to complaints that reference short seller reports. We discuss two categories of those defenses below:

A. Challenging Loss Causation

Loss causation is a requirement of any claim under Section 10(b) and must be adequately pled if the complaint is to survive a motion to dismiss. On a motion to dismiss, defendants may be able to challenge loss causation where the plaintiffs allege that a short-seller report was a corrective disclosure (or revealed the truth).

In general courts have expressed skepticism of short-seller reports in the context of loss causation. For example, in *In re Bofl Holding, Inc. Sec. Litig,* the Ninth Circuit held that the plaintiff's reliance on short-seller blog posts was insufficient to establish loss causation. 977 F.3d 781, 797 (9th Cir. 2020). The *Bofl* court focused on the fact that the short-seller posts were anonymous, made by a party who had a "financial incentive to convince others to sell," and included disclaimers as to the accuracy of the reports.

The court concluded that any reasonable investor would have "taken their contents with a healthy grain of salt." Ninth Circuit courts following the *Bofl* opinion look to the nature of a short seller when determining loss causation. See, e.g., *Espy v. J2 Glob.*, 99 F.4th 527, 541 (9th Cir. 2024); *Mulquin v. Nektar Therapeutics,* 510 F. Supp. 3d 854, 873 (N.D. Cal. 2020).

Courts dismiss claims based on short-seller reports that fail to reveal new, non-public information. For example, in *Espy*, the Ninth Circuit found that a short-seller report was not a corrective disclosure where it simply relied on a "careful reading of public documents, including [] investor presentations, press releases, employees' LinkedIn profiles, board members' resumes, public corporate records, and SEC filings." 99 F.4th at 542.

Similarly, in *Meyer v. Greene*, the Eleventh Circuit held that a short-seller report was not corrective even though it included both information that was not readily available (but still publicly accessible), and expert analysis of public source material, which the court referred to as the "mere repackaging of already-public information." 710 F.3d 1189, 1197-99 (11th Cir. 2013) (if every "short-seller's opinion based on already-public information could form the basis for a corrective disclosure, then every investor who suffers a loss in the financial markets could sue under §10(b)... [t]hat cannot be—nor is it—the law."); see also *In re Arcimoto Inc.*, 2022 U.S. Dist. LEXIS 230721, at *18–19 (E.D.N.Y. Dec. 22, 2022) (finding a short-seller report's reliance on SEC filings insufficient to plead loss causation).

Courts also have found that short-seller reports (or certain statements within the reports) are not corrective where they constitute the short-seller's opinion or a negative characterization of existing public information. See *In re Omnicom Grp., Inc. Sec. Litig*., 597 F.3d 501, 512 (2d Cir. 2010) (finding a "negative journalistic characterization of previously disclosed facts does not constitute a corrective disclosure"); see also *Fila v. Pingtan Marine Enter. Ltd.*, 195 F. Supp. 3d 489, 497 (S.D.N.Y. 2016) (analyst article which "voiced numerous concerns about [defendant company's] books and management" was "precisely the sort of 'negative journalistic characterization of previously disclosed facts' that cannot be the basis for loss causation in this Circuit.").

Defendants should consider challenging loss causation where the report itself is not credible (e.g., anonymous), based on public information, or represents nothing more than the short seller's negative opinion.

B. Challenging Confidential Witness Statements

Separate from loss causation, defendants should consider challenging short-seller reports that are based on confidential witness statements if plaintiffs rely on these statements in their complaints. *Miao v. Fanhua* is instructive. 442 F. Supp. 3d 774 (S.D.N.Y. 2020).

There, the court stated that there is a "particular need for close scrutiny where a short-seller report relied upon by a securities plaintiff itself relies on 'confidential' or anonymous sources, without corroboration." Id. at 801. The court held that the plaintiff's reliance on the short-seller report's confidential witnesses was insufficient given the heightened pleading standard securities suits must meet.

The court found that: (a) the plaintiff's complaint failed to contain independent allegations corroborating the witness' statements; (b) the short-seller report failed to state with particularity the witness'

positions and job responsibilities in the company; (c) the witness' statements were unmoored in time and so failed to connect to the allegedly wrongful conduct at issue; and (d) the plaintiff's counsel failed to investigate or corroborate the witness statements. See *Arata v. Std. Lithium Ltd.*, 805 F. Supp. 3d 449, 471 n.12 (E.D.N.Y. 2025) (dismissing securities class action complaint after finding counsel failed to validate confidential source information in short-seller report the complaint relied upon).

Thus, where a short-seller report relies on confidential witnesses, defendants should consider raising a challenge in the motion to dismiss to a plaintiff's reliance on those witnesses.

IV. Responses to Short-Seller Reports

In addition to defending against allegations based on short-seller reports in securities lawsuits, some companies consider taking other actions in response (such as filing a defamation suit or initiating an internal investigation) or are required to participate in government investigations regarding the reports.

A. Defamation Claims.

To bring a defamation claim against a short seller, a company must establish that the short seller (1) made a false statement; (2) that was published without authorization; (3) made with actual malice; and (4) that caused special harm or constituted defamation *per se. Coleman v. Grand*, 158 F.4th 132, 138 (2d Cir. 2025); *Reliance Ins. Co. v. Barron's,* 442 F. Supp. 1341, 1344 (S.D.N.Y. 1977) (applying actual malice standard for defamation claims involving public companies).

Although such a suit can be worth considering, these are not always easy cases to win. For example, proving actual malice requires showing that the purported defamatory statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not." *Planet Aid, Inc. v. Reveal,* 44 F.4th 918, 924 (9th Cir. 2022) (quoting *N.Y. Times Co. v. Sullivan,* 376 U.S. 254, 280 (1964)); see *Mimedx Grp., Inc. v. Sparrow Fund Mgmt. LP*, 2018 U.S. Dist. LEXIS 28026, at *21 (S.D.N.Y. Jan. 12, 2018) (finding company failed to allege actual malice in defamation suit related to short seller report because "actual malice is a measure of the defendant's attitude toward the truth, not his attitude toward the [company]").

Moreover, companies should expect a short seller to argue that their reports were mere opinions and not factual representations (as generally required to bring a defamation suit). See *Mimedx Grp., Inc*., 2018 U.S. Dist. LEXIS 28025, at *15–17 (finding the statements were "opinions and predictions—not statements of fact" as required to state a defamation claim).

B. Government Investigations

The SEC and DOJ have pursued actions against short sellers for securities fraud in connection with deceptive short-seller reports. See *SEC v. Left,* No. 2:24-cv-06311 (C.D. Cal. filed July 26, 2024) (SEC criminal charges against "activist short seller Andrew Left and his firm, Citron Capital LLC, for engaging in a $20 million multi-year scheme to defraud followers by publishing false and misleading statements regarding his supposed stock trading recommendations"); see also *United States v. Left,* No. 2:24-cr-456 (C.D. Cal. filed July 25, 2025) (federal criminal charges against a short seller). At times, companies will be asked for information associated with these investigations, or to otherwise cooperate with them.

C. Internal Investigations

Companies or boards may also consider conducting an internal investigation based on the short-seller report's allegations. An investigation can disprove the short sellers' claims, enabling the company to publicly counter the report and reassure shareholders. If the claims have merit, an internal investigation can help the company remediate any deficiencies it identifies.

Conclusion

Short sellers are playing an increasing role in the securities litigation landscape. But companies and individual executives are not defenseless against complaints that rely on short-seller reports. They should, in consultation with counsel, consider challenging complaints that rely on short-seller reports when there are, for example, insufficient allegations regarding loss causation or reliance on unsubstantiated confidential witness statements. Of course, any of the defenses will depend on the specific circumstances facing the company.

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