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## *Securities Litigation*

WilmerHale has defended clients in hundreds of class, derivative, shareholder and individual actions alleging securities fraud, breach of fiduciary duty and other corporate misconduct.

For decades, market participants, corporate clients and individuals have turned to WilmerHale's experienced lawyers to navigate the complex universe of securities laws and rules of corporate governance actively litigated by government agencies, regulatory bodies and private parties. We have vast experience defending federal and state securities claims alleging fraud, violations of prospectus and other disclosure obligations, breach of fiduciary duty, corporate misconduct, and insider trading, and have helped clients address challenges involving mutual fund trading and marketing, restatements, broker-dealer duties to clients and counterparties, and regulatory obligations. We are recognized nationally for our defense of major class actions, having secured the early dismissal of countless cases and defeated class certification or obtained summary judgment in many others. Our proven track record includes notable successes in litigation arising from US Securities and Exchange Commission (SEC) enforcement matters and in the resolution of Financial Industry Regulatory Authority (FINRA) arbitration.

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## *Key Contacts*



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## *Areas of Focus*

Securities Class Actions

Shareholder Derivative  
Litigation

SEC Enforcement Litigation

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## *Related Solutions*

Appellate and Supreme Court  
Litigation

Class Actions

Cybersecurity and Privacy

FinTech

Insurance, Annuities and  
Retirement

Securities Enforcement  
Trials

Blockchain and  
Cryptocurrency

Congressional Investigations

Executive Compensation and  
Employee Benefits

Futures and Derivatives

Investment Management

State Attorneys General

White Collar Defense and  
Investigations

Broker-Dealer Compliance  
and Regulation

Crisis Management and  
Strategic Response

Financial Services

Healthcare

Life Sciences

Technology

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## Experience

### **DISTRICT AND APPELLATE COURT VICTORY IN SHAREHOLDER CLASS ACTION**

Obtaining an important victory in the Second Circuit Court of Appeals, affirming the dismissal of a securities fraud class action in the Southern District of New York arising from claims that a biodiesel production company deceived investors by failing to disclose accounting errors and internal control issues. After securing the affirmance of the decision, we also secured the voluntary dismissal of a related derivative action.

### **DISMISSAL OF ALL CLAIMS IN SECURITIES FRAUD CLASS ACTION AND DERIVATIVE LITIGATION**

Securing the dismissal of both a federal securities fraud class action and related federal shareholder derivative litigation in the Central District of California against a leading developer of interactive entertainment content and services, arising from the disclosure of state and federal investigations of alleged sexual harassment, gender-based discrimination, and related retaliation. After granting our prior motions to dismiss with leave to replead, the court entered dismissal with prejudice on our third motion to dismiss in each case, adopting our arguments that the plaintiffs had failed adequately to allege an actionable statement, scienter, or a *Caremark* claim.

### **DELAWARE CHANCERY COURT VICTORY DENYING SHAREHOLDER'S REQUEST FOR FURTHER SECTION 220 PRODUCTION**

Obtaining complete victory in the Delaware Chancery Court in a case involving a stockholder's Section 220 demand to inspect books and records. In a widely cited decision, the Vice Chancellor found that plaintiff had failed to establish that our client's production of board-level materials in response to the plaintiff's 220 demand was deficient, and rejected across the board plaintiff's request for further inspection or production of board- and management-level communications.

### **DISMISSAL OF SHAREHOLDER CLASS ACTION**

Securing the dismissal of all claims against a clinical-stage pharmaceutical company in a shareholder class action alleging that the company failed to adequately disclose supposed flaws in clinical trial design, weaknesses in clinical data, and communications with FDA. The court adopted our arguments that the purportedly omitted information was publicly available, defendants had made adequate risk disclosures, and that defendants' statements were not misleading. Plaintiffs did not attempt to replead or appeal.

### **DISTRICT AND APPELLATE COURT VICTORY IN SHAREHOLDER CLASS ACTION**

Obtaining affirmance in the First Circuit Court of Appeals of the dismissal of a securities fraud class action in the District Court of Massachusetts against a biopharmaceutical company on a variety of grounds, including lack of falsity and scienter, in a matter arising out of claims that the company failed to disclose serious adverse events and other issues related to its Phase III clinical trials.

### **DISMISSAL OF ALL CLAIMS IN SECURITIES FRAUD CLASS ACTION**

Securing dismissal of a securities fraud class action in the Southern District of California against a clinical-stage biotechnology company, arising out of claims that the company failed to disclose details of clinical trial design and supposed weaknesses in clinical data. Largely adopting our arguments, the court found that plaintiffs failed to allege a materially misleading statement and failed to allege scienter. Plaintiffs did not attempt to replead, and we obtained voluntary dismissal of a related derivative case soon

thereafter.

### **DELAWARE SUPREME COURT VICTORY UPHOLDING VALIDITY OF FEDERAL FORUM PROVISIONS**

Successfully appealing to the Delaware Supreme Court, which upheld the validity of provisions in a corporation's certificate of incorporation requiring shareholders of that corporation to sue in federal court, rather than state court, over alleged violations of the Securities Act of 1933. This decision provides Delaware corporations with a potentially powerful tool to exercise control over the venue for Securities Act litigation, thereby allowing corporations to avoid duplicative litigation filings and steering cases to federal courts that are more accustomed to hearing federal securities claims.

### **DISTRICT COURT VICTORY IN SHAREHOLDER CLASS ACTION**

Securing the dismissal of all claims against a biopharmaceutical company and its officers in a shareholder class action lawsuit alleging securities fraud in the District of Massachusetts. We successfully refuted claims that the company and its executives misled investors about possible FDA approval of a cancer drug, with the judge concluding, "It is difficult to determine how defendants could have more explicitly warned the public about the uncertainty of its timing estimates or what language would have satisfied plaintiff."

### **DISTRICT AND APPELLATE COURT VICTORY IN SHAREHOLDER CLASS ACTION AND SUCCESSFUL CONCLUSION OF SEC INVESTIGATION**

Obtaining the dismissal of all claims in a federal class action lawsuit alleging that a biopharmaceutical company and its executives misled shareholders regarding whether the company manufactured its lead drug candidate using current Good Manufacturing Practices and the prospects for FDA approval. After securing dismissal in the trial court at the motion to dismiss stage, we successfully persuaded the appellate court to affirm the district court's judgment. We also represented the company in a yearlong SEC investigation related to these issues, which the SEC concluded without recommending any action.

### **DISMISSAL OF MARKET MANIPULATION CLAIMS AND AFFIRMANCE ON APPEAL**

Securing the affirmance on appeal of the dismissal with prejudice of a putative class action complaint alleging that a shipping company and certain of its executive officers engaged in market manipulation by issuing discounted shares and effecting reverse stock splits. In affirming the dismissal, the court of appeals adopted our arguments that the transactions were fully disclosed and the allegations of manipulation were unsupported.

### **DISMISSAL OF SHAREHOLDER CLASS ACTION**

Obtaining the dismissal of a federal securities fraud class action alleging a pharmaceutical company concealed its alleged unlawful off-label marketing practices from the public and precluded investors from knowing the risks of investment. Following oral argument, the district court endorsed our reasoning and dismissed all claims with prejudice.

### **DISMISSAL OF ALL CLAIMS IN SECURITIES FRAUD CLASS ACTION**

Securing the dismissal of all claims with prejudice in a putative securities fraud class action against a leading wealth management and financial services firm at the motion to dismiss stage. Because plaintiffs could not allege any out-of-pocket loss, the court rejected plaintiffs' claim to lost opportunity cost or disgorgement of profits, holding that plaintiffs failed to allege any actual damages.

## **DISMISSAL OF SHAREHOLDER M&A CLASS ACTION**

Securing the dismissal of all claims in a shareholder class action in which the shareholders alleged that the proxy statement in connection with the sale of the company, valued at over \$1 billion, was false and misleading. The acquisition was unique in that it involved a negative premium to the acquired company's share price. In dismissing plaintiffs' claims in their entirety, the court's decision affords protection for companies' financial forecasts under both the Private Securities Litigation Reform Act's safe harbor provision for forward-looking statements and the related bespeaks caution doctrine and holds that plaintiffs challenging statements of opinion in proxy statements must establish that the statements are both subjectively and objectively false.

## **DISTRICT COURT VICTORY FOR NOVEL CEA INTERPRETATION**

Winning a summary judgment motion in a putative class action based on a novel question of the applicability of the Commodity Exchange Act's anti-manipulation provisions to trading of commodities on foreign exchanges that use US-based trading infrastructure.

## **GLOBAL RESOLUTION OF CLASS ACTIONS AND STATE AG AND REGULATORY INVESTIGATIONS**

Successfully mediating—on behalf of a leading custody bank and foreign exchange market maker—a resolution to misrepresentation, contract, statutory and fiduciary duty claims brought by a putative class of custody customers related to alleged overcharging for foreign exchange transactions, as well as related False Claims Act claims brought by multiple state attorneys general. The lawsuits were brought amid investigations by the Department of Justice, the SEC, and the Department of Labor, as well as shareholder derivative litigation. After consolidating the putative class actions and securing the partial dismissal of the putative class complaint, our team mediated a resolution to the putative class's claims as part of a global resolution with all of the state AGs and federal regulators.

## **DISMISSAL OF FRAUD CLASS ACTION CONCERNING FDA STUDY**

Successfully arguing for the dismissal of a class action in federal district court alleging that a biotech company deceived investors by omitting to disclose material information related to communications with the FDA on the timing of a study of a new biomaterials device. When the plaintiff appealed the decision to the First Circuit, we also argued the successful appeal.

## **TRIAL VICTORY AGAINST THE SEC**

Defending two former mortgage brokers in a lawsuit filed by the SEC accusing the officials of obscuring the company's worsening financial condition during the collapse of the housing bubble that fueled the 2008 financial crisis. In federal district court, we persuaded the jury to clear its clients, two executives, of half of the 10 charges. After the jury deadlocked on the remaining charges, the SEC dismissed the claims with prejudice on the eve of retrial.

## **REPRESENTATION OF SPECIAL COMMITTEE**

Representing 11 current and former independent directors of a major retailer in connection with shareholder derivative suits and demand letters arising out of a data breach and alleging breach of duty claims. Our clients include officers of major companies and financial institutions who comprise a Special Litigation Committee of the Board of Directors created to investigate and decide the claims and demands.

## **HIGH-STAKES LITIGATION FOR ENERGY YELDCO**

Representing a renewable energy company in large-scale multidistrict litigation brought

by shareholders in the wake of a historic downturn in the energy markets and the demise of its corporate parent. These events spawned the filing of more than a dozen bet-the-company securities and shareholder derivative litigation filings against our client and related defendants across the United States, now coordinated in a single MDL proceeding.

#### **DISTRICT COURT VICTORY FOR FORMER CFO**

Winning a total defense verdict in favor of a former CFO of a government information service provider in federal district court after the SEC brought a civil enforcement action alleging securities fraud, violations of the Securities Exchange Act's books and records and internal controls provisions, and aiding and abetting the company's securities law violations.

#### **MULTIDISTRICT LITIGATION: LIBOR**

Representing an international bank in more than 50 multidistrict class and individual actions concerning allegations of improper setting of the London Inter-Bank Offered Rate (LIBOR).

#### **SEC DISMISSAL OF FRAUD CHARGES AGAINST STATE AG**

Persuading a federal judge to dismiss fraud charges brought by the SEC against a state attorney general for allegedly introducing potential investors to a technology company without disclosing that he would receive commission on investment dollars. We obtained total dismissal with prejudice of all claims at the motion to dismiss stage.

#### **DISMISSAL OF ALL CLAIMS IN SHAREHOLDER CLASS ACTION**

Securing a significant and often cited dismissal of all claims in a class action lawsuit in which shareholders alleged securities fraud following a drop in a pharmaceutical company's share price after its announcement of disappointing results in a Phase 3 clinical trial. The most significant portion of the ruling involved the court's rejection of the plaintiffs' insider trading argument, wherein the court agreed with our argument regarding the use of a 10b5-1 trading plan.

#### **SEC DISMISSAL OF CLAIMS IN ADMINISTRATIVE ACTION**

Persuading the SEC chief administrative law judge to dismiss all claims against a former financial services executive, including claims for alleged misstatements and omissions, scheme liability, and aiding and abetting in order to mislead investors. Following a three-week trial, the judge rejected the SEC's legal theories, and even declared that the company itself did not engage in any violative conduct.

#### **ALTERNATIVE ENERGY CLASS ACTIONS**

Representing renewable energy companies in the defense of a more than a dozen securities class actions and shareholder derivative cases brought in state and federal courts around the country.

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## Recognition



### ***Nationwide Ranking for Securities: Litigation***

*Chambers USA*

2010-2023



### ***Nationwide Ranking for Litigation – Securities***

*U.S. News - Best Lawyers® “Best Law  
Firms” List*

2021-2024



### ***Litigation-Securities Law Firm of the Year***

*U.S. News - Best Lawyers®*

2023

- *U.S. News and World Report and Best Lawyers®* consistently names WilmerHale a "Best Law Firm," most recently in 2024, and named WilmerHale the 2023 Law Firm of the Year in Litigation – Securities. According to the directory, the recognition “reflects the highest level of respect a firm can earn among other leading lawyers and clients from the same communities and practice areas.”
- *Global Investigations Review* named WilmerHale the 2016 and 2022 Most Impressive Investigations Practice of the Year. For eight consecutive years the firm has been ranked among the top five on the GIR 30 list, which features the world’s leading law firms for complex multijurisdictional corporate investigations.
- *Chambers USA* – Consistently recognizes WilmerHale as a top firm for Securities Litigation nationally and across several states. The legal directory guide highlights our “top-tier team that can put together winning strategies for the most complex, challenging matters” and “impressive record in cases involving allegations of insider trading, breaches of fiduciary duty and corporate misconduct.” Clients note that our attorneys are “really strategic people who understand how the regulators and the government work” and are “responsive, well organized, and offer creative solutions in sophisticated, high-stakes litigation matters.”
- *The Legal 500 United States* – Consistently recognizes the firm in the area of securities litigation—defense. Recent guides have praised our team as “an absolute powerhouse” comprised of “deeply experienced securities litigators.”
- *LMG Life Sciences* has long named WilmerHale one of the nation’s leading life sciences firms, recommending our team for Non-IP Litigation & Enforcement, including securities litigation.

- *The American Lawyer* named WilmerHale the 2020 Law Firm of the Year, and referred to our “series of high-profile wins against the SEC” in its coverage of the firm’s finalist honors in the Litigation Department of the Year competition.