



FENWICK & WEST LLP

CORPORATE & SECURITIES LAW UPDATE

9th Circuit Decision in Vantive Case

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Note Friday's 9th Circuit decision affirming a dismissal with prejudice of the Vantive securities class actions because they failed to plead the bases of fraud with particularity as required by the Federal Securities Litigation Reform Act on 1995. This follows a series of similar 9th Circuit decisions indicating that the plaintiffs burden of stating a claim under the Reform Act is very high in a typical "stock decline" case. Plaintiffs cannot rely on general allegations of misleading statements or "secret" changes in aggressive revenue recognition policies. The court would not allow the plaintiffs to conduct a fishing expedition to find support for these allegations, noting that this is the sort of case the Reform Act was intended to eliminate. Note also the detailed analysis of trading by several insiders, concluding that, while some of the sales might raise suspicions because of the amounts sold, they did not support a claim of fraud because they occurred long before the stock decline or because the sales were made at prices that were lower than the trading prices reached by the stock, in the weeks and months following the sales.

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