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Navigating Confidential Witness Allegations in Securities Litigation

WRITTEN BY

Jay A. Dubow | Erica Hall Dressler | Milica Krnjaja

Plaintiffs pursuing securities fraud claims under Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 face the heightened pleading standards imposed by both Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act (PSLRA). To survive a motion to dismiss, plaintiffs must therefore plead “the who, what, when, where, and how” of the alleged fraud and the facts that give rise to a strong inference that the defendant acted with scienter with particularity. These requirements can pose significant hurdles for plaintiffs, who may lack firsthand knowledge or direct access to facts that clearly show why a statement was misleading or documents that reveal a defendant’s state of mind.

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