

US Supreme Court to Hear Nvidia Crypto Mining Case on Securities Pleading Standard

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On June 17, the U.S. Supreme Court granted certiorari in *Nvidia Corp. v. E. Ohman J:or Fonder AB*,^[1] agreeing to hear Nvidia's appeal of a Ninth Circuit ruling that revived shareholders' fraud claims regarding Nvidia's cryptocurrency mining sales. This gives the Court a chance to resolve two circuit splits on the pleading requirements of the Private Securities Litigation Reform Act of 1995 (PSLRA).

Congress passed the PSLRA to limit frivolous securities lawsuits and provide protections to stifle abusive securities claims. Before the enactment of the PSLRA, plaintiffs could proceed past the pleading stage with minimal evidence of fraud, and then use pretrial discovery to seek support for their allegations. This low standard encouraged the filing of meritless lawsuits, imposing high discovery and litigation costs on defendants, which often forced them to settle lawsuits based on unfounded allegations. Seeking to eliminate abusive litigation tactics, one of the PSLRA's central reforms was to impose a heightened pleading standard for securities fraud claims, requiring plaintiffs to state with particularity the facts constituting the alleged violation, including material misrepresentations or omissions by the defendants, and the facts giving rise to a strong inference that the defendants acted with scienter.

In the underlying suit in the U.S. District Court for the Northern District of California, shareholders brought a putative class action lawsuit under Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5, alleging that Nvidia, which makes graphic processing units intended for gaming applications, and its CEO, Jensen Huang, knowingly understated the extent to which Nvidia's gaming segment revenues were driven by sales to cryptocurrency miners rather than to gamers.^[2] To establish falsity and scienter, rather than cite any internal documents, the complaint relied on an expert witness report analyzing public data about the activities of cryptocurrency mining companies to estimate the percentage of Nvidia's revenues that came from cryptocurrency miners.^[3] The complaint also cited interviews with former employees, claiming that Nvidia had internal reports analyzing sales and usage data, to which Nvidia's CEO had access.^[4] However, none of the former employees provided any facts about the contents of those internal reports.^[5] Instead, according to Nvidia's petition for writ of *certiorari*, the plaintiffs' expert speculated what the reports would have shown.^[6]

The district court dismissed the complaint, concluding that it did not tie the specific content of any data source about crypto-related demand to particular statements made by the company sufficient to support an inference of scienter.^[7] A divided panel of the Ninth Circuit reversed in part and remanded, finding that plaintiffs adequately showed scienter because, based on the interviews and the expert report, the sales data at the time would have shown a large portion of Nvidia's sales were being used for cryptocurrency mining.^[8]

The Issues Before the US Supreme Court

The questions before the U.S. Supreme Court concern whether plaintiffs seeking to allege scienter under the PSLRA based on allegations about internal company documents must plead with particularity the contents of those documents, and whether plaintiffs can satisfy the PSLRA's falsity requirement by relying on expert opinions.

Nvidia claims that a circuit split exists on both questions. First, Nvidia argues that the Second, Third, Fifth, Seventh, and Tenth Circuits hold that the PSLRA requires plaintiffs to allege with particularity the actual contents of internal documents; while the First — and now Ninth — Circuit allow a complaint to proceed based on allegations that an internal record exists, as long as it alleges what an internal report might have said. Second, Nvidia argues that the Ninth Circuit's decision created a circuit split on whether a plaintiff's expert opinion can substitute for particularized factual allegations of falsity, a necessary element in establishing a securities fraud claim. According to Nvidia, before the Ninth Circuit's decision, both the Second and Fifth Circuits agreed that, although it is permissible for a plaintiff to bolster a complaint by including a nonconclusory opinion to which an expert could testify, such opinions cannot substitute for facts under the PSLRA.

In their brief in opposition to the petition for writ of *certiorari*,^[9] the plaintiffs argued that the Ninth Circuit's decision did not create or deepen a circuit split, and that Nvidia mischaracterized the complaint's allegations about the testimony of former employees and the purposes of the expert report.

Implications

Because this case involves the fundamental requirements for pleading securities fraud under the PSLRA — scienter and falsity — its outcome could have significant consequences on future securities litigation.

First, as Nvidia's petition pointed out, inconsistent holdings on issues as significant as pleading scienter and falsity create too much uncertainty for securities litigation. Thus, the U.S. Supreme Court's ruling should provide much-needed clarity on the level of specificity required when alleging scienter based on internal company documents. If the Court sides with Nvidia, plaintiffs will need to plead with particularity the actual contents of internal documents, potentially further raising the bar for initiating securities fraud class actions.

Second, the decision will address whether expert opinions can satisfy the PSLRA's falsity requirement. A ruling that expert opinions cannot substitute for particularized factual allegations could limit plaintiffs' ability to rely on expert testimony at the pleading stage, thereby reducing the number of cases that proceed to discovery. This outcome would force plaintiffs to adjust their litigation strategies, focusing more on obtaining concrete evidence of fraud by conducting thorough investigations before filing a complaint.

Third, by narrowing the types of evidence plaintiffs may use to adequately allege the heightened pleading requirements of the PSLRA, the Court's decision could further the PSLRA's goal of curbing frivolous securities lawsuits. This would alleviate the burden on publicly traded companies, which often face high discovery and litigation costs even when allegations are unfounded.

[1] No. 23-970, 2024 WL 3014476 (U.S. June 17, 2024).

[2] See *Iron Workers Loc. 580 Joint Funds v. NVIDIA Corp.*, 522 F. Supp. 3d 660 (N.D. Cal. 2021).

[3] See Complaint ¶¶ 76,77,78, *Iron Workers Loc. 580 Joint Funds*, 522 F. Supp. 3d 660; see also Petition for a Writ of Certiorari at 10, *Nvidia Corp.*, No. 23-970, 2024 WL 3014476 (Petition).

[4] See Petition, *supra* note 3, at 11.

[5] *Id.*

[6] *Id.*

[7] *Iron Workers Loc. 580 Joint Funds*, 522 F. Supp. 3d at 675.

[8] *E. Ohman J:or Fonder AB v. NVIDIA Corp.*, 81 F.4th 918, 940 (9th Cir. 2023).

[9] Brief in Opposition at 3-4, *Nvidia Corp.*, No. 23-970, 2024 WL 3014476.

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