

FEDERAL SECURITIES CLASS ACTION DISMISSED WITH PREJUDICE

On March 28, 2005 Judge Cummings, United States District Court Judge in the Northern District of Texas, Lubbock Division, dismissed with prejudice a class action complaint filed against Alamosa Holdings, Inc., its CEO, CFO, and two outside directors, alleging violations of the Securities Exchange Act of 1934 and the Securities Act of 1933.


This case was predicated on an announcement by Alamosa, a Sprint affiliate, on June 13, 2002 that it was revising downward projected subscriber additions for the second quarter of 2002, which it had estimated six weeks earlier on May 1, 2002. Following the downward revision, Alamosa's stock price declined and shareholder lawsuits followed a year and a half later. The shareholder plaintiffs alleged that the defendants had made false and misleading statements about the subscriber numbers and had caused Alamosa to issue misleading financial statements during the putative class period, thereby violating Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and specifically Rule 10b-5 promulgated thereunder. The plaintiffs also accused the defendants of violating Sections 11 and 15 of the Securities Act of 1933 by issuing an allegedly false and misleading registration statement. Among the important holdings by the Court in its [59-page opinion](#) are:

Forward-Looking Projections Protected by Reform Act's Safe Harbor. The Court found that Alamosa's projections of its expected subscriber additions were protected from liability by the safe harbor provision for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 (the "Reform Act"). Alamosa had identified its subscriber projections as forward-looking statements and had accompanied them with meaningful cautionary language that warned investors of important risks that could cause actual results to differ materially from the company's projections. The Court rejected the view adopted by some courts that it is not appropriate at the motion to dismiss stage to determine whether a statement is accompanied by meaningful cautionary language, finding that such a view is inconsistent with the Reform Act. The subscriber-projection claims were further defeated by the plaintiffs' failure to sufficiently plead that the defendants had actual knowledge of their falsity. The Court also found that the plaintiffs' attack on Alamosa's projections amounted to nothing more than a "fraud by hindsight" claim, which is inactionable under the federal securities laws.

No Scienter as to Outside Directors' Stock Sales. The Court also rejected the plaintiffs' attempt to extrapolate an inference of scienter from stock sales by two outside director defendants. This finding was based, in part, on the fact that the directors had received their shares as consideration in exchange for the prior sale of their company to Alamosa, and had been locked-up by the terms of the merger agreement from selling any shares for a period of time. Noting that these defendants did not sell shares until after the lock-up expired, the Court found that the stock sales were not suspicious and did not constitute a motive to commit fraud.

No Loss Causation. The Court also ruled that the essential element of loss causation had not been satisfied. The Court concluded that because none of the other alleged misrepresentations or omissions beyond the May 1, 2002 subscriber projections were the subject of a "corrective disclosure" followed by a stock price drop, these alleged misrepresentations and omissions did not cause the plaintiffs' losses and therefore were not actionable. The Court's ruling as to loss causation has been confirmed by the recent decision issued April 19, 2005 in [Dura Pharmaceuticals, Inc. v. Broudo, No. 03-932](#), in which the United States Supreme Court ruled that plaintiffs in securities fraud class actions must allege a causal connection between their alleged economic loss and the alleged misrepresentations.

No Liability Based on Allegedly Misleading Registration Statement. As to the plaintiffs' 1933 Act claims, the Court found that the plaintiffs lacked standing to sue under Section 11 because the complaint failed to allege that the plaintiffs had



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purchased any shares traceable to a defective registration statement as required by the Fifth Circuit's recent decision in [Krim v. pcOrder.com, Inc., No. 03-50737 \(5th Cir. March 1, 2005\)](#), in which Haynes and Boone was lead defense counsel. The Section 11 claims were also barred by the statute of limitations because the plaintiffs failed to file suit within one year of when they discovered, or should have discovered, the alleged defects in the registration statement. Furthermore, the Court pointed out that according to the plaintiffs' own complaint the "corrective disclosure" that precipitated the stock price decline had nothing to do with the alleged misrepresentations contained in the registration statement. The Section 11 claims were therefore also barred by the absolute negative causation defense.

Noel Hensley, Carrie Huff, and Barrett Howell of Haynes and Boone, LLP defended Alamosa in this matter. If you have any questions regarding the *Alamosa* decision, the *Krim* decision, or other Securities Litigation matters, please contact any of the attorneys listed below.

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