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Gibson Dunn Wins First-Ever Meme Stock Appeal, Vacating Cassava Sciences Class Certification

Firm News | October 21, 2026

Gibson Dunn secured vacatur of class certification through a novel meme-stock argument in the Fifth Circuit. The win came in a securities-fraud class action against Cassava Sciences, a clinical-stage biopharmaceutical company developing a potential Alzheimer's treatment, and several of its executives. The October 16 decision is the first from a federal court of appeals to address how meme-stock trading bears on the class-wide presumption of reliance. Its closing language will be quoted in market-efficiency fights across the circuit: courts "must assess evidence of both market efficiency and market inefficiency," and the familiar *Cammer*/*Krogman* factors "are merely a tool to that end, not the whole project."

Plaintiffs allege that Cassava and its executives overstated the research record of the company's experimental Alzheimer's drug, simufilam. A federal court in Austin certified a class of everyone who bought Cassava securities from September 2020 to October 2023, crediting plaintiffs' expert's march through the standard market-efficiency factors. Gibson Dunn secured interlocutory Rule 23(f) review and argued that the certification order ignored the defining feature of the case: Cassava traded as a leading meme stock. Its price surged and collapsed without new, material information—rising 1,800% in seven months and sometimes moving roughly 50% in a single day—while severe short-selling constraints kept negative information out of the price. On that record, plaintiffs could not prove the efficient market that *Basic Inc. v. Levinson*'s presumption of reliance requires. Plaintiffs answered that the factors settled the question and that the parties' post-appeal class settlement mooted the appeal altogether.

Judge Engelhardt, joined by Judges Willett and Douglas, sided with Cassava on both points. A settlement that takes effect only with court approval "does not moot an action unless the court grants approval," and approving a class settlement itself requires a certified class. On the merits, the panel concluded that the district court "misapplied the legal standard by failing to evaluate evidence of market inefficiency and rejecting defendants' meme-stock-dynamics argument out of hand." Courts must weigh the market-efficiency factors rather than count them, and they must consider all evidence for and against efficiency. That includes Cassava's no-news price swings and short-selling constraints—evidence that "undermines *Basic*'s key premise that the stock was incorporating information efficiently." The panel vacated the certification order and remanded.

The winning Gibson Dunn team representing Cassava Sciences included partners Monica Loseman, Gregg Costa, and Brian Richman, of counsel Scott Campbell, and associates Patrick Fuster, John Turquet Bravard, Lloyd Marshall, and Jed Greenberg.

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