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Life Sciences Securities Litigation Insights

December 20, 2024

Executive Email Can Expose Public Companies to Securities Fraud Claim

Pizzuto v. Homology Meds., Inc., No. 1:23-CV-10858, 2024 WL 1436025
(D. Mass. Mar. 31, 2024)

Case Highlight

In a securities fraud action earlier this year, an executive's statement made in an email to a single research analyst was alleged to be false or misleading. In *Pizzuto v. Homology Meds* ("*Pizzuto*"), plaintiffs brought a securities class action complaint against Homology Medicines Inc. ("Homology"), a biopharmaceutical company, alleging that the company's statements regarding the safety and efficacy of its gene therapy treatment were false and misleading. Among the challenged statements was one made by Homology's Chief Communication Officer ("CCO") in an email to a research analyst in response to an inquiry about a Facebook post. Specifically, one of Homology's trial patients had posted about her test results and treatment publicly on Facebook. Although the Facebook post was removed and/or made private within a few hours, analysts reacted quickly to the post. When a research analyst emailed Homology's CCO inquiring about the post, the CCO replied: "Some Facebook post. Nothing fundamental changed for [Homology] but unfortunately, our stock price." The plaintiffs alleged that this statement was "affirmatively false or materially misleading" because the post represented "a materially adverse development in the [phase 1] trial data." Ultimately, the court held that the CCO's email "was a generic expression of corporate optimism, or 'puffery' about how Homology was doing" and, as such, was "immaterial as a matter of law."

Key Takeaways

Although Homology was not held liable based on its CCO's email, this case highlights the risk posed by executive emails. Executive emails have come up previously in securities fraud actions in the context of assessing scienter, but rarely are challenged themselves as false or misleading. But it is clear from *Pizzuto* that the plaintiffs' bar does not discriminate against the medium in which the alleged misstatements are made and, thus, executives at public companies should take caution that a statement in an email to an analyst may potentially serve as a basis for a future securities fraud claim under Section 10(b). *Pizzuto* thus serves as a friendly reminder that executives should exercise caution when sending emails to the street—even if the email is directed to a single analyst. Companies should consider holding regular securities litigation training sessions with executives who frequently interface with the market and, as a general practice, in-house or outside counsel should review executive emails to the street to reduce the risk of future securities litigation exposure.

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