

## Corporate & Financial Weekly Digest

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### **District Court Finds Failure to Disclose All Relevant Information Renders Statements Misleading**

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The U.S. District Court for the District of Connecticut denied defendants' motion to dismiss plaintiff's complaint for securities fraud brought under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. The complaint alleged that defendant Sturm Ruger, a company that designs, manufactures, and sells firearms, failed to disclose problems with its transition to a "lean manufacturing" model, and thereby misled plaintiffs into purchasing the company's stock at an artificially inflated value. After the announcement in late 2006 of its new manufacturing strategy, the company's share price rose, eventually trading at a high of over \$13 per share in March 2007. However, after two positive quarters, sales fell dramatically in the third quarter of 2007, as a result of the company's inability to produce its products at the necessary rate, and, not surprisingly, the company's stock price also suffered.

In their complaint, the plaintiffs pointed to a number of statements in the company's filings that they asserted were materially misleading because they did not reflect the "actual financial position of the company." The defendants moved to dismiss the complaint, arguing that the allegedly false statements upon which the securities fraud claims are based were not actionable, because the statements were (i) puffery and mere expressions of corporate optimism, (ii) forward-looking statements accompanied by reasonable cautionary language; or (iii) accurate. The district court agreed that a number of the statements were not actionable because they constituted mere puffery or forward-looking statements subject to the safe-harbor provisions in the Private Securities Litigation Reform Act.

The court concluded, however, that the complaint adequately alleged that several statements concerning the company's performance were materially misleading because they omitted critical information. Thus, for example, the court concluded that the complaint adequately alleged that the company's statements concerning the magnitude of its backlog were materially misleading without the additional disclosure that the backlog was due to a slow rate of production, not increased demand for the company's products. As a result, and because the court also determined that the plaintiffs had adequately alleged scienter, the court denied the motion to dismiss. (*In re Sturm, Ruger and Co.*, No. 3:09-cv-1293, 2011 WL 494753 (D. Conn. Feb. 7, 2011))

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