

## Corporate & Financial Weekly Digest

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### Revisions of Earnings Forecasts Fail to Support Securities Fraud Claims

Co-authored by [Gregory C. Johnson](#)

A federal court in Texas dismissed a purported securities fraud class action against a clothing retailer because the claims (a) were based on deficient confidential witness statements and (b) failed to demonstrate that the company's inaccurate earnings projections were made with knowledge of falsity.

An investor sued Men's Wearhouse, Inc. under § 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 after the company revised its earnings projections during the third and fourth quarters of 2007. The company's stock fell 63 percent after these announcements, and the plaintiff proffered statements from four anonymous employees who said company executives should have known the original forecasts were overly optimistic and failed to disclose unfavorable information about the company's business prospects provided by middle managers. Men's Wearhouse moved to dismiss.

The U.S. District Court for the Southern District of Texas was critical of the role played by the plaintiff's confidential witnesses, stating that, "A secret witness is not far above a false witness." Even if the anonymous employees were believed, the court added, their statements did not demonstrate that executives had committed fraud but established only that the witnesses disagreed with the strategies and policies of company executives. Moreover, the plaintiff's allegations did not support a fraud claim because the company's earnings forecasts were presented as future projections and were not made with actual knowledge of falsity.

*Material Yard Workers Local 1175 Ben. Funds v. Men's Wearhouse Inc.*, Civ. No. H-09-3265, 2011 WL 3059229 (July 22, 2011).

Katten Muchin Rosenman LLP  
Charlotte Chicago Irving London Los Angeles New York Washington, DC