

Simpson Thacher Obtains Dismissal of Securities Claims Asserted Against KKR Biomet

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On September 27, 2018, Judge Philip P. Simon of the U.S. District Court for the Northern District of Indiana dismissed all claims against Simpson Thacher client KKR Biomet LLC in *Shah v. Zimmer Biomet Holdings, Inc.* The putative class action asserts securities fraud claims against Zimmer Biomet Holdings, Inc. (“ZBH”), its officers and directors, alleging that ZBH misstated or failed to disclose regulatory compliance problems at one of its manufacturing facilities. Plaintiffs also asserted claims against KKR Biomet and other former private equity investors in ZBH which sold their shares in two public offerings during the relevant period. Plaintiff asserted these claims under Section 12(a)(2) of the Securities Act, alleging misstatements in the offering documents, and 20A of the Exchange Act, alleging that the sponsors sold stock while in possession of material non-public information. The court dismissed the Section 12(a)(2) claims on the ground that KKR Biomet LLC and the other private equity defendants were not “statutory sellers” because they sold their stock to underwriters, not to the public. The court dismissed the Section 20A claims because the Plaintiffs failed to allege that the private equity defendants actually possessed material non-public information.

The Simpson Thacher team included Peter Kazanoff and Daniel Stujenske (Litigation).

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