

Southern District of New York: Mere Disagreement With a Company's Goodwill Calculation Does Not Give Rise to a Securities Fraud Claim

05.28.20



(Article from *Securities Law Alert*, May 2020)

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On May 7, 2020, the Southern District of New York dismissed a securities fraud action arising out of a company's multi-billion dollar goodwill impairment. *In re General Electric Sec. Litig.*, 2020 WL 2306434 (S.D.N.Y. May 7, 2020) (Cote, J.). The court held that plaintiffs' "theory ultimately rests entirely on a disagreement about the exercise of judgment" in calculating goodwill.

The court began its analysis by noting that under the Second Circuit's decision in *Fait v. Regions Financial Corp.*, 655 F.3d 105 (2d Cir. 2011), "goodwill balances are opinion statements."^[1] The court explained that because "[g]oodwill balances are accounting estimates produced through an exercise of judgment," there is "a wide range of goodwill values that could be compliant with GAAP." The court stated that in order to "plead that the defendants made misleading statements in their calculations of [the company's] goodwill, . . . plaintiffs must identify particular facts supporting an inference that [the company's] accounting fell outside of that permissible range."

Here, the "bulk" of the impairment "was attributed to goodwill that had been added to [the company's] balance sheet" from the acquisition of a manufacturing company. Plaintiffs alleged that the company "should have recognized" earlier than it did that the goodwill from the acquisition "was excessive and that the anticipated synergies would not be realized." The court found "plaintiffs' assertion of falsity rest[ed] on an accusation that [the company's] judgment or opinion about goodwill, which rested on other judgments—its projections of future cash flows and anticipated synergies—was misleading."

According to plaintiffs, the company "knew before it took the massive impairment about the very trends that it used to justify the impairment." But the court held that "a company's knowledge of unfavorable trends does not show that its goodwill balances were misleading as of the time they were stated," because "previously known trends may later reveal themselves to be of a different magnitude or importance than initially expected." The court found it significant that "the trends that plaintiffs rely on in alleging that [the company] should have more quickly written down its goodwill were all publicly disclosed to investors during the [c]lass [p]eriod." The court concluded that plaintiffs "failed to plead facts that would support a claim that the goodwill reported in the [c]lass [p]eriod . . . was a false or misleading statement of opinion."

[1] Please [click here](#) to read our discussion of the Second Circuit’s decision in *Fait*.

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