

Delaware District Court Dismisses Federal Securities Fraud Charges Brought Against Selendy Gay Client

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Selendy Gay, in collaboration with Wilmington-based Ross Aronstam & Moritz, obtained a total dismissal of all claims in a federal securities fraud complaint brought against client Warburg Pincus in *Bellinger, et al. v. Laboratories Topco LLC, et al.* The ruling from the U.S. District Court for the District of Delaware was the result of a comprehensive motion to dismiss filed by the team last summer.

The complaint, which was filed in the federal court in Delaware, alleged federal and Texas state securities law claims, as well as claims for breach of contract and common law fraud. The case was brought by John and Gina Bellinger who sold FSNS, a food testing business, to affiliates of Warburg Pincus and another co-investor for \$400 million. As part of the transaction, FSNS was merged with Certified Labs, an existing Warburg portfolio company, and the Bellingers reinvested 25% of the proceeds from the sale into Certified Labs. The Bellingers claimed in the lawsuit that they had been defrauded out of the \$100 million because they were lied to about the state of Certified Lab's business.

The motion to dismiss was referred by the district court to a magistrate, who issued a report that recommended the dismissal of all claims except the two securities law claims. Selendy Gay then filed a partial objection to the magistrate's recommendation, urging that the securities claims also be dismissed.

On Thursday, March 28, the district judge issued an opinion that adopted the framework and reasoning in Selendy Gay's objection, finding that the allegedly untrue statements on which the plaintiffs relied did not give rise to material omissions and that the plaintiffs had failed to plead scienter. The judge adopted the magistrate's recommendation as to the other claims, and thus dismissed the entire case.

The team at Selendy Gay was led by partners Faith Gay and David S. Flugman and included associates Laura King and Xinchun Li.

Attorneys

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