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THIRD CIRCUIT HOLDS ABSENCE OF STOCK PRICE MOVEMENT IN A SECURITIES FRAUD CASE DOES NOT CATEGORICALLY NEGATE MATERIALITY

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In late September, in *In re Ocugen, Inc. Securities Litigation*,[1] the United States Court of Appeals for the Third Circuit abandoned its decades-old categorical rule in securities fraud cases that the absence of stock price movement in the wake of an allegedly corrective disclosure conclusively negates materiality. The Third Circuit held instead that district courts must take into account the "total mix of information" in determining materiality rather than applying any bright-line rule.

This decision may make it more difficult for securities fraud defendants facing cases brought in the Third Circuit to secure dismissals at the pleading stage based on lack of materiality where there is negligible movement in the stock price following an alleged corrective disclosure.

Background

In *Ocugen*, investors alleged that Ocugen, Inc.—a small, financially struggling pharmaceutical company—and its CEO made materially false statements about the company's finances and internal accounting controls. Citing three former employees, the investors alleged that company leadership manipulated financial forecasts, that Ocugen struggled to find anyone willing to sign its Q2 2023 quarterly report amid internal fraud concerns, and that it had improperly accounted for an agreement with a Chinese business partner. On April 1, 2024, Ocugen disclosed that it would restate 15 prior quarters of financial statements due to a material weakness in internal controls. Following this allegedly "corrective" disclosure, Ocugen's stock price dropped roughly 10% the next day but recovered to pre-disclosure levels within two trading days.

A putative class action was filed against Ocugen and its CEO under Section 10(b) of the Securities Exchange Act of 1934, which prohibits the use of any manipulative or deceptive device or contrivance in violation of regulations promul-

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gated by the SEC. To state a claim under Section 10(b), investors must adequately plead: (1) a material misrepresentation or omission; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.

The U.S. District Court for the Eastern District of Pennsylvania dismissed the complaint, stopping its analysis after the first step in reliance on the so-called *Oran-Burlington* rule. That rule, unique to the Third Circuit, was the product of two Third Circuit cases (from 1997 and 2000, respectively) which together stood for the proposition that, when measuring materiality in the context of an efficient securities market, information is not material as a matter of law where it has no effect on the stock price.[2] As the Third Circuit held in the *Oran* case, in an efficient market, materiality "may be measured post hoc by looking to the movement, in the period immediately following disclosure, of the price of the firm's stock."[3] This dispositive rule rendered statements immaterial as a matter of law when a company's stock price did not decline following a corrective disclosure.

The District Court in *Ocugen* dismissed the complaint in reliance on this doctrine on the ground that a complete recovery of Ocugen's stock price within two trading days of the allegedly corrective disclosure was conclusive evidence that the alleged misstatements were not material. The investors appealed, and the Third Circuit reversed.

The *Matrixx* Rule

On appeal, the Third Circuit contrasted the District Court's analysis with the Supreme Court's holding in *Matrixx Initiatives, Inc. v. Siracusano*.[4] In *Matrixx*, which post-dated the *Burlington* and *Oran* decisions from the Third Circuit, the Supreme Court rejected "bright-line" materiality rules and reaffirmed the standard first articulated in *TSC Indus., Inc. v. Northway, Inc.*,[5] that materiality is satisfied where there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[6] The Supreme Court explained that "[a]ny approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be overinclusive or underinclusive."[7]

The Third Circuit's Decision

The Third Circuit unanimously reversed the District Court's dismissal order, abrogating the *Oran-Burlington* rule as inconsistent with *Matrixx* and remanding for the proper "total mix" analysis. The Third Circuit explained that in *Matrixx*, "the Supreme Court did not ask whether the company's stock price reflected what investors found

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important," nor "did it pay attention to the stock price's rebound—even though it occurred within three days of a corrective disclosure." Instead, the Court employed "the familiar 'total mix' standard."

The Third Circuit further explained that "materiality is a mixed question of law and fact that requires the delicate assessments of the inferences a reasonable shareholder would draw from a given set of facts."

The Third Circuit also cautioned that, on remand, the District Court similarly should not use the fact that the company issued a restatement as outcome determinative with regard to the materiality inquiry. The Third Circuit explained that it was "mindful not to replace the *Oran-Burlington* Rule with another categorical rule that restatements always render some prior disclosures materially false." No shortcuts or proxies for materiality will suffice.

Practical Implications

We do not expect this decision to have considerable implications on the materiality analysis outside the Third Circuit. The Third Circuit itself recognized that the *Oran-Burlington* rule was "a rule unique to our Circuit" and that decisions from other circuits have previously recognized that the *Oran-Burlington* rule did not survive the Supreme Court's 2011 decision in *Matrixx*. However, within the Third Circuit, this decision may make it more difficult for securities fraud defendants to get cases dismissed at the pleading stage based on the lack of materiality of the challenged statements where there is negligible movement to the stock price.

While dismissal at the pleading stage under the materiality prong of Section 10(b) where there is negligible movement in the stock price may be more difficult following the *Matrixx* decision (and now *Ocugen*), failure to demonstrate loss causation remains fertile ground for defendants to seek dismissal in those circumstances. The loss causation analysis "asks whether a plaintiff has sufficiently linked the alleged fraud to the alleged loss."[8] Typically, to satisfy the loss causation element of a Section 10(b) claim, investors need to identify a stock drop following a revelatory corrective disclosure and to tie the loss to defendant's alleged fraud. Courts consistently dismiss fraud claims at the pleading stage where the complaint has not adequately alleged that the stock drop was causally connected to the alleged fraud.

For example, the Ninth Circuit held in *Wochos v. Tesla, Inc.*[9] that where a stock price experiences a "quick and sustained recovery" soon after a corrective disclosure, that recovery refuted the inference that the fraud "caused any material drop in the stock price." The Ninth Circuit has continued to follow this decision, affirming dismissal this year in *Nova Scotia Health Employees' Pension Plan v. Comerica Incorporated*,[10] on loss causation grounds because the stock price decline following the supposed adverse event "was modest, typical, and quickly reversed." While at least one plaintiff-side firm has suggested that it may seek to overturn this line of decisions, looking to *Ocugen* for support, we expect that courts will continue to differentiate between the requirements to adequately plead materiality, on the one hand, and the requirements to adequately plead loss causation, on the other hand. As the Second Circuit recently explained in discussing loss causation, "the necessary showing at the pleading stage increases—sometimes dramatically—where the loss does not immediately follow the corrective disclosure."[11]

ENDNOTES:

[1]*In re Ocugen, Inc. Securities Litigation*, 2026 WL 2934862 (3d Cir. 2026).

[2]*See In re Burlington Coat Factory Securities Litigation*, 114 F.3d 1410, Fed. Sec. L. Rep. (CCH) P 99485, 38 Fed. R. Serv. 3d 557 (3d Cir. 1997); *Oran v. Stafford*, 226 F.3d 275, Fed. Sec. L. Rep. (CCH) P 91205, 55 Fed. R. Evid. Serv. 872 (3d Cir. 2000).

[3]*Oran v. Stafford*, 226 F.3d 275, 282, Fed. Sec. L. Rep. (CCH) P 91205, 55 Fed. R. Evid. Serv. 872 (3d Cir. 2000).

[4]*Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 131 S. Ct. 1309, 179 L. Ed. 2d 398, Fed. Sec. L. Rep. (CCH) P 96249, 62 A.L.R. Fed. 2d 737 (2011).

[5]*TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 96 S. Ct. 2126, 48 L. Ed. 2d 757, Fed. Sec. L. Rep. (CCH) P 95615 (1976).

[6]*Matrixx*, 563 U.S. 27, at 38.

[7]*Id.* at 39.

[8]*Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 344-46, 125 S. Ct. 1627, 161 L. Ed. 2d 577, Blue Sky L.

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