

Decision Should Lead to Dismissal at the Pleadings Stage of Many Section 11 Cases

Client:	Century Aluminum Company, its directors and officers
Industry:	Manufacturing materials
Area of Law:	Securities class actions
Venue:	U.S. Court of Appeals for the Ninth Circuit
Result:	Won affirmation of Pillsbury's lower court victory and raised standards for pleading aftermarket claims under section 11 of the Securities Act of 1933



“Ninth Circuit Effectively Does Away with Securities Claims for Aftermarket Purchasers.”

—Another law firm's take on the scope of Pillsbury's victory

For securities fraud defendants, section 11 claims can be particularly scary. Unlike the more familiar 10b-5 claims, a section 11 plaintiff need not prove that the defendant misspoke intentionally or with deliberate recklessness; under section 11, a defendant can be liable for even an innocent misstatement.

But there are limits. Section 11 plaintiffs must prove “tracing.” This means the would-be plaintiff must have either bought directly in the public offering covered by the misleading registration statement, or bought stock traceable to that offering. For companies that have made only one offering, this was never any big deal. But once a company has made multiple offerings, a plaintiff will likely have difficulty proving that the stock he or she bought in an anonymous stock market transaction actually had been issued under the misleading registration statement, as opposed to an earlier offering.

Difficulty proving, yes, but until now, no difficulty pleading. Before Pillsbury's successful attack, courts usually just accepted conclusory allegations that the plaintiff could trace, even if no facts backed up that allegation. This meant that a plaintiff with no hope of tracing could still force a class action beyond the pleadings and into expensive discovery—and, often, a settlement.

In 2013, Pillsbury attorneys convinced the Ninth Circuit to eliminate this practice by applying the Supreme Court's *Twombly* and *Iqbal* decisions to allegations of tracing. Under the new standard, plaintiffs now must also plead facts that “tend to exclude the possibility that [plaintiff's] shares come from the pool of previously issued shares.”

“Standing alone, the conclusory allegation that plaintiffs ‘purchased Century Aluminum common stock directly traceable to the Company's Secondary Offering’ does not allow us to draw a reasonable inference about anything because it is devoid of factual content,” the Ninth Circuit wrote in striking down such claims.