Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—S.D.N.Y.: Teladoc merger suit tossed on remand for lack of scienter, (Mar. 25, 2025)

Securities Regulation Daily Wrap Up

By Rodney F. Tonkovic, J.D.

The pleadings failed to support either conscious misbehavior or recklessness or motive and opportunity.

On remand from the Second Circuit, a lawsuit stemming from Teladoc's integration with a merger partner were dismissed. Broadly, the complaint alleged that Teladoc hid the true extent of the difficulties and risks it faced in integrating with the merger partner. The court initially dismissed the complaint, but the Second Circuit remanded to address the issues of scienter and loss causation. The district court found that the allegations fatally failed to plead scienter, dismissed the complaint, and closed the case (*In re Teladoc Health, Inc. Securities Litigation*, No. 1:22-cv-04687 (S.D.N.Y. Mar. 21, 2025)).

Teladoc, a provider of virtual healthcare services, merged with Livongo in October 2020. The merger took place as part of Teladoc's effort to offer whole-person care, and its chronic care business is now called Livongo.

Integration statements. The statements that remain at issue involve the integration of Teladoc and Livongo. The statements relate to: Teladoc's integration of the two companies' sales teams; the integration of marketing data and tech; and risk disclosures in Teladoc's 2021 Form 10-K.

The complaint alleged violations of the antifraud and controlling persons provisions of the Exchange Act. Broadly, the plaintiffs asserted that Teladoc's many misleading statements hid the true extent of the difficulties in integrating Livongo and the competitive pressures it faced.

The district court dismissed the complaint in July 2023, concluding that none of the challenged statements were material misrepresentations. The Second Circuit reversed the dismissal in part, finding that four of the statements were, in fact, material misrepresentations. The circuit court remanded the action to address the issues of scienter and loss causation, which had not been reached in the original action.

Sales teams. Teladoc's CEO stated twice in 2021 that the two sales teams were "fully integrated." The Second Circuit found that the complaint adequately alleged, based on details provided by confidential witnesses, that these statements were misleading.

On remand, the court concluded that the complaint failed to show that the CEO made his statements with the required scienter. None of the allegations showed that the CEO knew that the statements were misleading or that he was aware of—or had a duty to monitor—any of the sales-related problems noted by the confidential witnesses.

Marketing and tech. In late 2021, Teladoc's Chief Marketing and Engagement Officer said that the companies' "marketing data and tech stacks" were integrated. The Second Circuit found that this statement was misleading because this did not happen until after the class period. The district court said that there was nothing in the complaint showing that this officer had access to contrary facts that would alert her that the integration was incomplete at the time.

Integration risks. Finally, Teladoc's Form 10-K warned of several categories of risks that could result from the integration process. The Second Circuit said that these risks had actually already materialized by that time. On

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remand, the district court said that there were no meaningful allegations that Teladoc's officers were aware of any of the issues alleged to have materialized.

The complaint went on to allege motive and opportunity based on the defendant officers' stock sales. None of the pointed-to sales, however, were unusual or suspicious. The defendants actually increased their overall ownership, and almost all of their sales were pursuant to 10b5-1 plans. A final holistic assessment of the allegations showed neither an inference of conscious misbehavior or recklessness, nor an inference of motive and opportunity to commit fraud.

The case is No. 1:22-cv-04687.

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Companies: Teladoc Health, Inc.

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