

## U.S. SUPREME COURT AGAIN CHANGES ITS MIND, WILL NOT DECIDE NVIDIA SECURITIES LAW DISPUTE

Dec 16, 2024

### WHAT HAPPENED

A month ago, the U.S. Supreme Court seemed on the verge of deciding two securities law cases that could substantially limit plaintiffs' ability to maintain securities fraud class actions against public companies. Now, the Court has determined that it will not decide either of them, permitting both cases to go forward in discovery.

Just last week, on December 11, the Court issued an order in *NVIDIA Corp. et al. v. E. Ohman J:Or Fonder AB et al.* (No. 23-970), stating that its prior grant of certiorari was "improvidently granted."

As discussed in our [June 21, 2024 post](#), the case involved whether plaintiffs can satisfy the wrongful intent element of a securities fraud claim by relying on allegations, supported by an expert witness, that internal company documents must have contradicted the company's public statement, without citing to the contents of specific internal documents.

### TAKEAWAYS

The Supreme Court's dismissal of the appeal means that the Ninth Circuit decision remains standing, and therefore the case will go forward.

It also likely means that plaintiffs, at least in some circuits, will continue to try to use expert reports to support allegations that public companies knew challenged disclosures were false.

The Court did not state the reason for the dismissal. However, it seems possible that it concluded that the appeals did not so much raise legal issues to resolve, but instead questions about whether settled law was correctly applied to the facts of the case.

### DEEPER DIVE

On November 22, the Court issued the same kind of order in *Facebook, Inc. v. Amalgamated Bank* (No. 23-980) – discussed in our [November 26, 2024 post](#) – concerning public-company disclosures of risk factors. It rejected the appeal barely two weeks after it had heard argument. In both cases,

district courts had dismissed the complaints, but the U.S. Court of Appeals for the Ninth Circuit had reversed and allowed the plaintiffs to proceed. Also in both cases, business and industry groups had filed *amicus* briefs urging the Court to hear the case and to reverse the Ninth Circuit.

When the Court dismisses previously granted petitions for certiorari as “improvidently granted,” it does not provide reasons for what it is doing. But here it seems possible that the Court concluded upon reflection that the appeals did not so much raise legal issues for the Supreme Court as involve questions about whether settled law was correctly applied to the facts of the case. For example, in the November 13 argument in the *NVIDIA* appeal, justices questioned defense counsel about whether what he was really seeking was “error correction,” suggesting they viewed the case as too fact specific for the highest court.

At issue in *NVIDIA* was whether plaintiffs had met their heightened pleading burden for fraud claims under section 10(b) of the Securities Exchange Act of 1934. The plaintiff-investors alleged that the microchip manufacturer misled them into believing that the company’s sales growth came primarily from video-game users, when in fact the key sales driver was cryptocurrency miners, a much more volatile market. The company’s stock price declined when cryptocurrency prices began to drop in 2018.

In their complaint, plaintiffs relied on expert witness analysis to contend that *NVIDIA*’s internal documents *must have* reflected the extent to which sales relied on cryptocurrency miners. That, they said, showed that the company knew its statements downplaying sales to cryptocurrency miners were false. The defense argued, in essence, that *must have* was not good enough – to satisfy the pleading rules, the defense argued, the plaintiffs needed to point to specific internal documents that defendants had belying their public statements.

The District Court agreed with defendants and dismissed the case. The Ninth Circuit, however, reversed, holding that plaintiffs had pleaded enough to survive the dismissal motion.

In its certiorari petition, the defendants portrayed the case as involving legal issues as to which the circuit courts of appeals were split, the classic reason for the Supreme Court to hear a case. They contended that the circuits were split concerning the evidence necessary to plead scienter under the Private Securities Law Reform Act, which was enacted to deter frivolous investor lawsuits.

The Supreme Court’s dismissal of the appeal means that the Ninth Circuit decision remains standing, and therefore the case will go forward. It also likely means that plaintiffs, at least in some circuits, will continue to try to use expert reports in seeking to support their pleadings.

## MEET THE TEAM



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