Katten
Katten Muchin Rosenman LLP
CORPORATE & FINANCIAL
WEEKLY DIGEST

Corporate & Financial Weekly Digest

December 9, 2011 by Bruce M. Sabados

Ninth Circuit Revisits Merck Rules on Securities Fraud Limitations Period

Co-authored by Dean N. Razavi.

The U.S. Court of Appeals for the Ninth Circuit overturned a district court's holding that a securities fraud claim was time-barred, noting that the 2010 Supreme Court case Merck & Co. v. Reynolds had rejected "inquiry notice" as the bright-line test for the limitations period. The plaintiff alleged that he had sold his interest in Alchemix Corporation based on misrepresentations as to ongoing negotiations between Alchemix, AFG investment group, and Western Oil Sands. Alchemix countered that, in 2002, it sent the plaintiff a letter noting that negotiations with AFG had terminated, putting the plaintiff on inquiry notice to further investigate the circumstances surrounding the negotiations. Because the limitations period is the earliest of five years or two years after the discovery of facts constituting the violation, the district court held that receipt of the letter more than two years before the suit was filed barred litigation.

The Ninth Circuit noted that while the plaintiff may have been on inquiry notice, Alchemix was unable to show how a reasonably diligent plaintiff would have discovered the specific misrepresentations merely by receipt of the letter. Because the touchstone for the limitations period is "discovery," the court vacated the dismissal.

Strategic Diversity, Inc. v. Alchemix Corporation, Nos. 10-15256, 10-16404 (9th Cir. Dec. 2, 2011).

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC