CLIENT ALERT

Private Plaintiffs May Assert Common Law Claims In Securities-Related Litigation Under New York Law

Dec. 27. 2011

New York's Court of Appeals ruled on December 20, 2011 that private plaintiffs, such as investors, can assert common law claims such as fraud, breach of fiduciary duty and gross negligence in securities-related litigation. The ruling is significant because it settled the issue that New York's blue sky statute, known as the Martin Act, does not preempt common law claims where the claims have a legal basis independent of the statute. As a consequence, plaintiffs will now have greater opportunity to assert common law claims under New York law in connection with investor or securities disputes. Click for a PDF of the decision: Assured Guaranty (UK) Ltd. v. J.P. Morgan Investment Management Inc.

Under the Martin Act, New York Attorney General has the exclusive responsibility for investigating and enjoining "fraudulent practices in the marketing of stocks, bonds and other securities within or from New York." While the Martin Act does not afford a private plaintiff the right to institute actions enforcing the statute itself, the question remained open, prior to Assured, as to whether private plaintiffs could bring common law claims separate and distinct from Martin Act obligations. The Court of Appeals answered that they can.

The Court explained that both the plain language and the legislative intent of the Martin Act support its ruling. First, the Court wrote: "the plain text of the Martin Act, while granting the Attorney General investigatory and enforcement powers and prescribing various penalties does not expressly mention or otherwise contemplate the elimination of common-law claims." Likewise, the Court added that "the Martin Act, as it was originally conceived in 1921 . . . did not evince any intent to displace all common-law claims in the securities field" and there is nothing "in the legislative history of the various amendments that demonstrates a 'clear and specific' legislative mandate to abolish pre-existing common-law claims that private parties would otherwise possess."

In reaching its ruling, the Court of Appeals distinguished earlier cases that had preempted private common law causes of action on account of the Martin Act. Those situations, the Court explained, differed because they involved claims alleging violations of the Martin Act itself. As the Court wrote, preemption applies in circumstances where "the purchaser's entire claim was premised on a violation of the Martin Act and would not have existed absent the statute." In other words, while it is well-settled under New York law that "a private litigant may not pursue a common-law cause of action where the claim is predicated solely on a violation of the Martin Act and its implementing regulations and would not exist but for the statute," that is not true for a claim based on a violation not completely governed by the Martin Act. Rather "an injured investor may bring a common-law claim (for fraud or otherwise) that is not entirely dependent on the Martin Act for its viability."

As a result of this decision, plaintiffs in investor and securities litigation will have an easier time asserting New York common law claims in addition to statutory claims. While the statutory claims -- especially under the federal securities laws -- are subject to more exacting pleading requirements, the common law claims, particularly those that do not require a showing of fraud, are not subject to these same standards and will be more difficult to dismiss at the pleading stage. On the other hand, the decision has
its greatest impact on individual as opposed to class investor claims because the burdens and requirements under the Securities Litigation Uniform Standards Act in pleading class common law securities claims remain in effect.

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