

# Update on BofI Whistleblower Litigation

**Whistleblower Defense Blog** on **May 16, 2018**

We previously reported in [March](#) and last [October](#) on a whistleblower litigation brought by Charles Erhart, a former Bank of Internet Holding, Inc. (BoFI) internal auditor. On December 3, 2015, in a separate action, the shareholders of BoFI brought a derivative suit, based in part on the facts of the whistleblower case, claiming BoFI's board of directors engaged in multiple schemes that caused a drop in stock price. On May 11, 2018, the United States District Court for the Southern District of California tentatively dismissed a sizeable portion of the suit due to the claims being "unripe." In Re: BoFI Holding, Inc. Shareholder Litigation, No. 3:15-cv-02722.

BoFI shareholders filed a putative class action securities fraud suit when BoFI's stock price fell over 30% after news broke of the whistleblower litigation. The suit was dismissed March 2017. The present suit was brought against the bank's directors and officers for knowingly breaching their duties, taking no action after learning Erhart was fired despite his whistleblower status, disregarding internal controls, and producing misleading securities disclosures, among other actions.

The company moved for a judgment on the pleadings, and the court found "derivative plaintiffs do not state a ripe claim when it is dependent on the conclusion of securities or whistleblower litigation regarding the same conduct." As a result, the plaintiffs have two options: (1) filing an amended complaint and proceeding with the claims that are ripe and supported by sufficient allegations of Article III standing, or (2) seeking to stay the case until the whistleblower litigation concluded.

As for the original whistleblower case, Erhart v. BoFI Holding, Inc., No. 15-cv-02287, a jury trial has been set for June 11, 2019.

We will continue to monitor developments in these related matters. This decision highlights that issues arising from employee whistleblower claims can have implications beyond the employment litigation itself.

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