

Smooth Sailing: Another Securities Class Action Against a Cruise Line Dismissed

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On May 27, 2021, the United States District Court for the Southern District of Florida [dismissed](#) a securities class action against Carnival Corp. (“Carnival”), which operates the world’s largest cruise company, relating to the company’s health and safety disclosures made prior to and as the COVID-19 pandemic spread. This decision follows a [dismissal of another securities fraud class action](#) against a major cruise operator six weeks earlier by the same court.

Like in the prior case against Norwegian, the *Carnival* court dismissed the suit upon finding the plaintiffs failed to plead the existence of any statements that were materially false or misleading, and failed to sufficiently allege scienter. In so doing, it applied traditional principles of federal securities laws to the anything-but-traditional circumstances created by the COVID-19 pandemic.

Background

The complaint involves statements made by Carnival between September 16, 2019 and March 31, 2020. It is focused on the cruise line’s pre-pandemic disclosures surrounding its commitment to health and safety (including in its 2019 Form 10-K), as well as its early 2020 disclosures related to the company’s operations and risks as it began to respond to the pandemic.

The plaintiffs alleged that, contrary to the cruise line’s stated commitment to health and safety, Carnival “lacked proper policies, procedures, controls, or processes to prevent cruise ships from embarking on new voyages” after learning that passengers and crew were exposed to COVID-19, and similarly lacked policies “to prevent passengers from embarking on cruise ships where infection had already been detected.”

According to the [consolidated complaint](#), on March 4, 2020, Carnival informed passengers on one of its ships that the U.S. Centers for Disease Control (“CDC”) was investigating a cluster of COVID-19 cases in northern California, including the death of a man linked to a previous Carnival cruise. Within two days, 21 passengers that had been on the ship on March 4 tested positive for COVID-19.

The complaint further alleges that on March 31 and April 1, 2020, Carnival made several filings with the SEC, including a Preliminary Prospectus Supplement seeking to commence a public offering of \$1.25 billion in Carnival common stock; this offering was reduced to \$500 million the next day. In these filings, Carnival discussed its plans to improve liquidity in light of the pandemic, and updated its disclosures regarding risks posed by COVID-19. These filings allegedly revealed the true financial harm that Carnival’s “dearth of health and safety protocols had inflicted upon its business.” Carnival’s stock price fell from \$13.17 at March 31 to \$8.80 on April 1 and further fell to \$7.97 on April 2, 2020.

No Materially False or Misleading Statements

The court found that none of Carnival’s challenged statements were materially false or misleading such that they could withstand the defendants’ motion to dismiss. These statements fell into five categories. *First*, the plaintiffs alleged Carnival’s 2019 statements discussing the company’s enhancements to its pre-pandemic health and safety protocols were actually false and misleading, given Carnival’s response to the COVID-19 outbreak on its ships. These measures, including the creation of an Incident Analysis Group, would allow employees to make recommendations to improve the company’s health and safety practices. The court instead found that Carnival’s statements regarding its planned health and safety improvements indicated the company’s acknowledgement of shortcomings in its present compliance methods. In the court’s view, a reasonable investor could appreciate that it would take time to make these improvements; accordingly, Carnival’s inability to complete these changes before the pandemic materialized did not render the statements materially false or misleading.

Second, the plaintiffs alleged Carnival downplayed the risk of COVID-19 in its 2019 10-K and related filings because a battery manufacturer based in Wuhan, China had already alerted Carnival's chief experience and innovation officer the scale and severity of the outbreak. The court, however, found those allegations vague and unpersuasive, especially in light of guidance from the CDC and the World Health Organization that, at the time, were reporting low infection risk.

Third, the plaintiffs alleged Carnival's February 2020 statements, which related to the company's prioritization of the health and safety of its passengers and crew, the existence of protocols surrounding COVID-19, and the role of its health and safety committees, were false and misleading. The court determined many of these statements reflected incomplete actions, ongoing initiatives, or aspirational goals, which could not be objectively measured and therefore would not mislead a reasonable investor. The court noted that some February 2020 statements involved completed enhancements or immediate actions that were to occur; accordingly, those statements could be actionable if they were false or misleading. But these statements also included caveats that protected them from liability. For example, Carnival's statements that certain enhanced procedures would take place at "many" of its embarkation ports meant that the absence of such procedures at some ports did not render the statements materially false.

Fourth, Carnival disclosed on March 13, 2020 that it "has not had a diagnosed case linked to our operation." Although the court noted that statement was objectively false, as numerous passengers had tested positive for COVID-19, the statement was made on the same day that the company announced a voluntary suspension of voyages. The court held that this statement, and any statements made thereafter, could not have reasonably misled investors given the suspension, and therefore the statement was not actionable.

Fifth, the court disagreed with the plaintiffs' argument that Carnival's statements affirming its compliance with health and safety standards were false and misleading based on subsequent confirmations of COVID-19 cases on board—a quintessential case of fraud by hindsight. In the court's view, the plaintiffs' suggested health and safety measures were far more stringent than the contemporaneous guidance, against which Carnival's statements must be measured.

No Compelling Inference of Scienter

Although the court did not find the plaintiffs had alleged any materially false or misleading statements, it nevertheless analyzed the complaint's scienter allegations. Notably, the court found it was plausible that Carnival was committed to health and safety aboard its ships while also believing the risk of COVID-19 in early 2020 was relatively low. Further, the court noted that unsuccessful and ineffective measures—as evidenced by the incidences of COVID-19 on Carnival's ships—did not, standing alone, support a strong inference of scienter.

Implications

This decision, with its focus on health and safety protocols and related disclosures, is particularly timely now, as certain parts of the world attempt to return to some degree of normalcy. As such, this opinion may be useful for tourism companies that are considering how to navigate a post-COVID world. As demonstrated here, courts may evaluate external factors, such as CDC guidance, in determining what would mislead a reasonable investor. Public disclosures of health and safety practices should take current guidance into account, especially as the risk of travelers contracting COVID-19, [including on cruise ships](#), remains.

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