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## Florida Appellate Court Declares Reliance to be an Essential Element of State Statutory Securities Claims

On June 9, 2017, Florida's Fifth District Court of Appeals held that a plaintiff must prove reliance to succeed on a claim for a violation of the Florida Securities and Investor Protection Act (FSIPA). See Florida Statutes §§ 517.011-32. Relying on the Florida Supreme Court's decision in *E.F. Hutton & Co. v. Rousseff*, 537 So. 2d 978, 989 (Fla. 1989), the Court held that a plaintiff seeking rescissory damages under FSIPA must prove that it actually relied on a material misrepresentation. *Lighting Science Group Corporation, et al., v. Geveran Investments Limited*, Case Nos. 5D15-4272 and 5D15-4273 (Fla. 5th DCA June 9, 2017).

In June 2012, Geveran Investment Limited (Geveran), a Cyprus-based investment entity associated with Norwegian billionaire John Fredriksen, sued Lighting Science Group Corporation (LSG) and other defendants involved in a securities transaction based on a \$25 million investment in LSG common stock in May 2011. Geveran sued the defendants under FSIPA, claiming that LSG had materially misrepresented two of its past financial statements.

Geveran argued to the trial court that FSIPA should be interpreted as a strict liability statute that required only a finding of a material misrepresentation without any showing of reliance. The Court reversed the trial court's decision granting summary judgment to Geveran and held that reliance was an element of Geveran's FSIPA claim, and further found that there were unresolved issues of fact regarding both reliance and materiality.

This opinion resolves any uncertainty regarding the elements required to prove a securities fraud claim under FSIPA. Previously, at least one federal district court found that reliance is not an element of an FSIPA claim, relying on a strict analogy to Section 12(2) of the Securities Act of 1933. Here, this Court concluded that a claim seeking rescissory damages under FSIPA should also be analogized to a common law rescission claim and requires reliance. The Court determined that a jury could find that Geveran's agent made a decision to invest in LSG based on his own investigation and did not rely on any purported misstatements in prior LSG financial statements.

Further, courts differed on the proper standard for materiality under FSIPA. The Court's decision clarifies that the test for materiality under FSIPA is identical to the test for materiality developed by the Supreme Court for Rule 10b-5 claims. Under this test, a fact is material only if there is a "*substantial likelihood*" that the misrepresented or omitted fact "would have been viewed by the reasonable investor as having '*significantly*' altered the 'total mix' of information available." The Court determined that it was for the jury to decide whether any statements or omissions made by LSG were material.

This opinion establishes that reliance is an element of a FSIPA claim and materiality should be analyzed under the same standard as a claim pursuant to Rule 10b-5.

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