

Qualcomm Escapes Diversity Suit

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Another diversity-based derivative suit was [dismissed](#) this week by a federal district court, joining a list of decisions that have rejected similar shareholder allegations.

This most recent decision, from the District of Delaware, dismissed claims alleging Qualcomm Inc. had allowed unlawful and discriminatory practices to exist within its executive ranks. Though the complaint was initially filed in the Southern District of California, Qualcomm's Bylaws contain a forum-selection provision designating Delaware as the exclusive forum for derivative litigation, and thus the case was transferred to Delaware in March 2021.

The complaint alleged that Qualcomm's directors violated Section 14(a) of the Exchange Act and SEC Rule 14a-9 by including materially misleading statements in their 2019 and 2020 proxy statements. These statements involved the company's goal of increasing board diversity, such as by the governance committee including women and racially/ethnically diverse candidates in the pool for future director nominees. According to the complaint, by failing to follow through on these promises, the company's directors breached their fiduciary duties to Qualcomm, abused their control of the company, and unjustly enriched themselves.

The district court rejected these allegations. The court found that Qualcomm's statements about the "goal" of assembling a diverse board was not actionable, because statements about a board's goals are puffery. It went on to find that the complaint lacked any material facts to support an inference that the statements about the board's Governance Committee were false or misleading: the fact that there were no diverse board members elected over the past two years did not mean that the committee did not include diverse candidates in the pool, and the complaint did not allege the pool did not contain diverse candidates.

The plaintiffs' failure to identify any false or misleading statements doomed their allegations under Section 14(a). The court held that allegations regarding nondisclosure of the director's own failures of oversight were simply attempts to "bootstrap" a federal securities claim onto a cause of action for breach of fiduciary duty.

On the state law claims, the district court applied Delaware law to find that the plaintiffs had failed to identify any specific laws governing racial or ethnic diversity that were violated by Qualcomm. Even if they had, the court held, the plaintiffs had failed to allege any specific details about those violations, and therefore it dismissed the breach of fiduciary duty claims for failure to plead demand futility. It dismissed the unjust enrichment and abuse of control claims for similar reasons, noting that they were duplicative of the fiduciary duty claim.

Until now, few courts handling these diversity suits have reached the substance of the allegations. Instead, such complaints have typically been dismissed on forum selection grounds, or solely based on demand futility. The decision on the Section 14(a) claim here, however, may be used to assess the viability of other diversity-related claims moving forward.

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