

CASE COMMENTARIES

SECURITIES – REGISTRATION STATEMENTS

The United States Supreme Court held that the proper interpretation of § 11 of the 1933 Securities Act requires a plaintiff to plead and prove that the plaintiff purchased securities registered under the allegedly misleading registration statement. *Slack Technologies, LLC v. Pirani*, 598 U.S. 759 (2023).

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In *Slack Technologies, LLC v. Pirani*, the United States Supreme Court addressed whether a public buyer must prove that their shares are traceable to a defective registration statement to state a claim under § 11 of the Securities Act of 1933. The Supreme Court granted a writ of certiorari on this issue because the United States Court of Appeals for the Ninth Circuit ruled that a plaintiff may be able to recover without pleading shares traceable to the challenged registration statement.

The Ninth Circuit’s decision went against the holdings of their own Circuit and other circuits who previously ruled that § 11 of the 1933 Act required the plaintiff to prove that the shares are traceable to that registration statement.¹ Upon review of the statute, the Supreme Court unanimously held that the language of § 11 must be read to require plaintiffs to prove that their securities are traceable to the allegedly false or misleading registration statement.

Slack Technologies, LLC (“Slack”) is a public technology company that decided to pursue a direct listing on the New York Stock Exchange in 2019. Typically, shares are sold publicly through an IPO that delays the sale of unregistered, preexisting shares through a lockup agreement. Under this direct listing, rather than an initial public offering (IPO), Slack’s preexisting shareholders sold their unregistered shares to the public immediately because there was no lockup agreement, and as a result, the direct listing “offered for purchase 118 million registered shares and 165 million unregistered shares.”² On the day Slack went public, respondent Fiyaz Pirani bought 30,000 shares of Slack and an additional 20,000 shares in the following months.³ Once the stock price dropped, Pirani filed a class action against Slack “alleg[ing] that Slack violated §§ 11 and 12 of the 1933 Act by filing a materially misleading registration statement.”⁴

Slack moved to dismiss the complaint for failure to state a claim upon which relief can be granted, because, Slack argued, Mr. Pirani failed

¹ See *Hertzberg v. Dignity Partners, Inc.*, 191 F. 3d 1076, 1080, n. 4 (1999).

² *Slack Techs., LLC v. Pirani*, 598 U.S. at 764 (2023).

³ *Id.*

⁴ *Id.* at 764–65.

to allege that he purchased shares connected with the allegedly misleading registration statement. The United States District Court for the Northern District of California denied Slack's motion to dismiss but certified its ruling for interlocutory appeal. Slack subsequently appealed and the Ninth Circuit accepted the appeal where a divided panel affirmed. The Ninth Court's decision regarding claims arising under §11 created a split of authority. Therefore, the Supreme Court granted certiorari to resolve this issue.

The Supreme Court addresses this issue by reviewing the language of § 11(a) of the 1933 Act,⁵ which provides:

In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue [certain enumerated parties].

The language that gives rise to the controversy in this case is the meaning of "such security." As discussed, Slack moved to dismiss the case reasoning that a party may not sue under § 11 unless "such security" is traceable to the registration statement at issue. On the other hand, Mr. Pirani argued that "such security" is broad in nature and can include securities not specifically issued under the challenged registration statement.⁶

The Supreme Court began its analysis by examining the plain meaning of "such" through its dictionary definition. Normally, "such" is utilized to refer to previous words or phrases. The Court concluded that there is no referent apparent in § 11(a) to determine the meaning of "such security."⁷ Accordingly, the Court explored the context and circumstances of the language to determine its meaning. Specifically, the Court emphasizes the phrase "*the* registration statement" found in § 77k rather than the use of a different article, such as "a" or "any."⁸ The use of this article suggests that "acquiring such security" must be traced to that particular registration statement. Moreover, the Court points to the

⁵ Formerly 15 U.S.C. § 77k(a).

⁶ *Slack Techs., LLC*, 598 U.S. at 766.

⁷ *Id.*

⁸ *Id.* at 767.

narrow focus of “such” throughout this statute and other provisions of the 1933 Act.⁹

Next, the Court references the damage cap found in § 11(e) which connects the “maximum available recovery to the value of the registered shares alone.”¹⁰ With Mr. Pirani’s interpretation in mind, logically, the damage cap would be extended to damages connected to unregistered shares if Congress intended a cause of action for unregistered shares under § 11.¹¹ To further suggest the stricter reading of the statute, the Court concluded that while direct listings may be new, the scope of liability under § 11 is not. According to the Court, “[s]ince *Barnes*, every court of appeals to consider the issue has reached the same conclusion: To bring a claim under § 11, the securities held by the plaintiff must be traceable to the particular registration statement alleged to be false or misleading.”¹²

The Court also rejects Mr. Pirani’s causation argument where he suggests that the case should proceed because “but for the existence of Slack’s registration statement for the registered shares, its unregistered shares would not have been eligible for sale to the public.”¹³ The Court notes that Mr. Pirani’s argument has no limitations and does not explain how this reading can align with the context above suggesting that liability runs with only registered shares.

Furthermore, the Court rejects Mr. Pirani’s policy argument where he proposes that his interpretation better accomplishes the goals of the 1933 Act. The Court explains that the Act is “limited in scope” with “[i]ts main liability provision impos[ing] strict liability on issuers for material falsehoods or misleading omissions in the registration statement.” On the other hand, the Securities Exchange Act of 1934 main liability provision “allows suits involving any sale of a security but only on proof of scienter.” In fact, the Court suggests that Congress may have crafted these acts to balance the liability provisions by drafting the 1933 Act to authorize “a narrow class of claims to proceed on less proof” and the 1934 Act with “a higher standard of proof to sustain a broader set of claims.”¹⁴

Ultimately, the Court vacated the Ninth Circuit’s judgment, including both rulings on § 11 and § 12, and remanded the case for the court to determine “whether Mr. Pirani’s pleadings can satisfy § 11(a) as properly construed.”¹⁵ The Court’s statutory interpretation and reasoning was most influenced by contextual clues found throughout the relevant

⁹ See 15 U.S.C. § 77e(a); 15 U.S.C. § 77f(a).

¹⁰ *Slack Techs., LLC*, 598 U.S. at 767–68.

¹¹ See *Barnes v. Osofsky*, 373 F. 2d 269, 272 (2nd Circ. 1967).

¹² *Slack Techs., LLC*, 598 U.S. at 768.

¹³ *Id.* at 768–69.

¹⁴ *Id.* at 770.

¹⁵ *Id.*

statutes and the long-standing precedent regarding the scope of § 11(a). Last, the Court noted in a footnote that the Court does not endorse the Ninth Circuit's idea that § 11 and § 12 "necessarily travel together."¹⁶ Rather, the Court advises that courts approach the two distinct sections cautiously when analyzing these claims.

Thus, practitioners should carefully propose arguments in lawsuits arising under § 11 and § 12 of the Securities Act of 1933 with the Supreme Court's unanimous opinion in mind. Importantly, transactional attorneys across the country should be aware of the Court's view on the varying scope and application of the Securities Act of 1933 as compared to the Securities Exchange Act of 1934. Specifically, prior to raising claims under § 11 for misleading registration statements, plaintiffs will now have the impossible task of proving which shares were unregistered prior to the direct sale, and in having to meet this high bar, these claims may be too difficult or costly to pursue in the future. Following this decision, the Supreme Court left federal courts with an explicit interpretation of the Securities Act of 1933 after the novelty of direct listings and their implication on unregistered securities, including potential lawsuits arising under § 11.

¹⁶ *Slack Techs., LLC*, 598 U.S. at 770 n. 3.