

## Federal Court Rejects "Core Operations" Theory of Scienter in Battery Manufacturer Fraud Case

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The District Court of Massachusetts dismissed Section 10(b)(5) claims against executives of a battery systems company, holding that plaintiffs could not rely on the theory that knowledge of the falsity of the statements at issue could be imputed to senior officers of a public company because they concerned the company's "core operations."

Plaintiffs claimed that defendants, the CEO, CFO and interim CFO of A123 Systems Inc., a manufacturer of lithium ion batteries used to power electric vehicles, had made materially misleading statements concerning the market demand for, and the safety and durability of, certain of their batteries. In January 2010, A123 entered into a contract with Fisker Automotive to supply prismatic batteries for sports cars. This contract was expected to yield 25% of A123's revenues for 2011. On December 21, 2011, the National Highway Traffic Safety Administration announced that Fisker was recalling 239 cars because of a defect in the A123 battery later discovered at A123's Michigan facility.

The court dismissed plaintiffs' complaint for failure to properly allege scienter. Plaintiffs proffered no allegations that any of the defendants had actual knowledge of, or were recklessly blind to, the Michigan plant's manufacturing problems. Instead, plaintiffs relied on the contention that the A123-Fisker relationship was crucial to the company's success. Relying on *Crowell v. Ionics, Inc.*, 343 F.Supp.2d 1 (D. Mass 2004), plaintiffs argued that knowledge of facts critical to a business's "core operations" may be attributed to corporate officers. The court refused to apply that doctrine, stating that without a "plus factor" creating an inference of knowledge (such as a communication to a defendant), the mere allegation that corporate executives should have known about certain company functions could not satisfy plaintiffs' pleading burden. Plaintiffs were granted leave to replead. *In re A123 Systems Inc. Securities Litigation*, No. 12-10591 (D. Mass. Mar. 14, 2013).

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