

Fourth Circuit Rejects the Use of Short-Seller Report as a Basis for Satisfying Loss Causation Element in Securities Fraud Action

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The [United States Court of Appeals for the Fourth Circuit](#) recently joined a growing consensus among federal appellate courts: short-seller reports, without more, rarely suffice to plead loss causation under the federal securities laws. In [Defeo v. IonQ, Inc.](#), 2025 U.S. App. LEXIS 8216, ___ F.4th ___ (4th Cir. Apr. 8, 2025), the Court held that a report by activist short-seller Scorpion Capital — which coincided with a significant stock price drop — did not constitute a corrective disclosure revealing previously concealed fraud to the market. The opinion aligns the Fourth Circuit with decisions from the Ninth Circuit, which have similarly found that loss causation cannot rest on short-seller publications that are speculative, anonymously sourced and heavily disclaimed.

IonQ is a publicly traded company operating in the quantum computing space. In *Defeo*, shareholder plaintiffs filed a complaint for violation of [Sections 10\(b\), 14\(a\) and 20\(a\) of the Securities Exchange Act of 1934](#) accusing IonQ and certain insiders of the Company of making misstatements concerning the prospects for IonQ's technology and the Company's financial performance. Plaintiffs' loss causation theory was premised on a May 3, 2022 report by a pseudonymous short-seller, which allegedly revealed the purported misrepresentations and caused the Company's share price to fall from \$7.86 to \$4.34.

Defendants moved to dismiss the complaint arguing, among other things, that plaintiffs failed to adequately plead loss causation because plaintiffs loss causation allegations relied almost entirely on a short-seller report that was speculative, anonymous, and heavily disclaimed. The district court granted defendants' motion to dismiss with prejudice, concluding that the report did not plausibly reveal new facts to the market sufficient to satisfy the standards necessary for pleading loss causation. After unsuccessfully seeking reconsideration and leave to amend, plaintiffs appealed the district court's dismissal of their complaint.

On appeal, the Fourth Circuit affirmed the district court's order dismissing plaintiffs' complaint. In short, the short-seller report did not plausibly disclose new facts to the market because the report's

authors, held a short position in IonQ stock, expressly disclaimed the accuracy of their information, admitted to paraphrasing anonymous sources and conceded they could not verify the truth of their claims. The Court reiterated that a shareholder plaintiff seeking to plead loss causation must allege new *facts* — not mere *allegations* — entered the market and caused the decline in stock price.

The Fourth Circuit found the Ninth Circuit's decisions in [*In re Bofl Holding, Inc. Securities Litigation*](#), 977 F.3d 781 (9th Cir. 2020), and [*In re Nektar Therapeutics Securities Litigation*](#), 34 F.4th 828 (9th Cir. 2022), persuasive. In *Bofl*, the Ninth Circuit held that blog posts authored by anonymous short-sellers who expressly disclaimed the accuracy of their content could not plausibly be understood by the market as revealing the truth of a company's alleged misstatements. In *Nektar*, the Ninth Circuit extended the reasoning in *Bofl* and held that a short-seller report relying on anonymous sources and speculative inference and without presenting new, independently verifiable facts failed to qualify as a corrective disclosure sufficient to satisfy the standard for pleading loss causation. The Fourth Circuit concluded that Scorpion Capital's report on IonQ shared the same deficiencies highlighted by the Ninth Circuit in *Bofl* and *Nektar*.

The Fourth Circuit also held that IonQ's own response to the Scorpion report — a press release issued the next day — did not salvage plaintiffs' theory of loss causation. IonQ expressly denied the report's accuracy, warned investors not to rely on the report and underscored the short-seller's financial motivation for tarnishing the Company. The Court rejected plaintiffs' contention that IonQ had a duty to specifically refute each allegation in the short-seller report. The Court further held that the handful of media articles cited by plaintiffs discussing the short-seller report did not affect the conclusion that plaintiffs failed to adequately plead loss causation. The articles merely noted the stock drop and the existence of the report, without confirming or endorsing the short-sellers' claims.

Defeo confirms that courts will look past market reaction and instead focus on whether a disclosure plausibly revealed verifiable, new information to the market when evaluating whether a securities fraud action adequately pleads loss causation. The Fourth Circuit's opinion does not impose a categorical bar on the use of short-seller reports to establish loss causation, but it makes clear that plaintiffs relying upon such reports must ensure that those reports meet a high standard of reliability. That standard is *not* met where the report disclaims its own accuracy, relies upon anonymous sources and offers only general accusations without offering independently verifiable facts. Allegations, even if market-moving, do not become revelations simply by appearing in a headline. For loss causation to be adequately pled, the law still requires facts, not just fallout.

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