

Fourth Circuit Declines to Extend Janus to Criminal Cases Re: Securities Fraud

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A three-judge panel of the US Court of Appeals for the Fourth Circuit recently affirmed the dismissal of a lawyer's *habeas* petition, finding that *Janus Capital Group Inc. v. First Derivative Traders*, a US Supreme Court case that exempts **investment advisers** from **securities fraud liability** for **funds' false statements**, did not apply to criminal cases. The appellant Thomas Prousalis Jr. pled guilty to three counts of securities fraud arising from his representation of Busybox.com (Company) for its initial public offering. In preparing the Company's registration materials, Prousalis failed to provide all necessary details concerning his compensation. After the Company's underwriter pulled out of the deal, thereby resulting in a \$2.5 million shortfall, Prousalis devised a scheme to "recycle" proceeds to purchase shares and compensate him and Company officers. After several unsuccessful appeals, Prousalis filed a *habeas* petition in the Eastern District of Virginia. The US District Court for the Eastern District of Virginia denied his petition, and the Fourth Circuit affirmed. Although Prousalis argued that the *Janus* definition of the "maker" of a false statement for securities fraud purposes meant that his conduct was no longer criminal, the Fourth Circuit found the Supreme Court's decision inapplicable. Noting that both the facts and reasoning in *Janus* were limited to the private right of action for securities fraud, the Fourth Circuit declined to apply it in the criminal context, citing "considerations of judicial restraint and legislative primacy."

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