

Winston & Strawn Secures a Win for Apollo Group in the Ninth Circuit

DECEMBER 19, 2014

Representing Apollo Group, the parent company of the University of Phoenix, Winston & Strawn secured a win this week in the Ninth Circuit in a putative securities class action. The case was one in a series of class actions brought in recent years against for-profit education companies, alleging that the companies made false statements to prospective investors about enrollment, revenue growth, and recruiting practices.

The case against Apollo was dismissed on the pleadings, and Winston was retained on appeal to defend that dismissal. The Ninth Circuit accepted our arguments and affirmed the dismissal in all respects, concluding, among other things, that the challenged statements were nothing more than “business puffing” and were not actionable as material misstatements. The court also concluded that the plaintiff had failed to allege that Apollo knew or was reckless in not knowing that its statements were false.

The Ninth Circuit’s opinion also answers one question that had previously been unresolved in that court. The ruling holds for the first time that the element of loss causation must be pleaded with specificity under Rule 9(b). As for this particular case, however, the Court made clear that the allegations of loss causation would have been insufficient under any pleading standard.

Winston & Strawn’s appellate and critical motions practice represented Apollo in the appeal. Appellate practice chair Linda Coberly handled the oral argument.

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