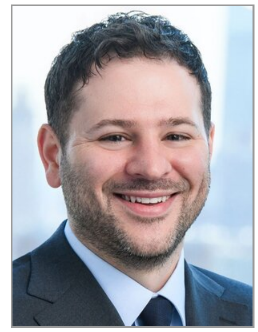
# How 2nd Circ. Raised The Bar For Pleading Securities Fraud

By **Michael Restey Jr. and Nikita Ganesh** (July 22, 2026, 2:47 PM EDT)



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On June 26, the U.S. Court of Appeals for the Second Circuit issued a decision in Huey v. Anavex Life Sciences Corp. affirming the dismissal of a securities fraud complaint for failing adequately to allege loss causation where the stock price increased upon the corrective disclosure and did not decline for a few days thereafter in the face of a broader market decline.[1]

While the ramifications of this decision remain to be seen, the ruling represents a significant expansion of a lead plaintiff's burden in pleading loss causation, as well as a court's role in evaluating such a pleading, under the Second Circuit's 2005 decision in Lentell v. Merrill Lynch & Co.[2]

**Lentell**

For over two decades, the Second Circuit's decision in Lentell, authored by U.S. Circuit Judge Dennis Jacobs, has been widely cited on the requirements for pleading loss causation in actions alleging violations of Section 10(b) of the Securities Exchange Act.[3]

In that case, the lead plaintiffs alleged that research analysts issued false and misleading research reports recommending that investors buy or accumulate shares of certain companies when those analysts purportedly did not believe those recommendations and issued them only to generate investment banking business.[4] The lead plaintiffs claimed that they adequately alleged loss causation based on the decline of the share prices of those companies following later analyst downgrades — which coincided with the burst of the dot-com bubble.[5]

The Second Circuit disagreed with the lead plaintiffs' argument, reasoning that they failed to sufficiently allege the required causal link.

The Second Circuit explained that, at the pleading stage, loss causation requires: (1) a "relationship between the plaintiff's investment loss and the information misstated or concealed" that is "direct" and not "attenuated"; (2) "both that the loss be foreseeable and that the loss be caused by the materialization of the concealed risk"; and (3) "that the market reacted negatively to a corrective disclosure."[6]

In holding that lead plaintiffs had failed to allege loss causation, the Second Circuit emphasized that "when the plaintiff's loss coincides with a marketwide phenomenon causing comparable losses to other investors, the prospect that the plaintiff's loss was caused by the fraud decreases."[7] In that case, the lead plaintiffs' losses were disconnected from the correction of the supposedly fraudulent buy or accumulated research report recommendations, which were coupled with information about the volatility risk inherent in those internet companies.[8]

**The Anavex District Court Decision**

In June 2025, U.S. District Judge Colleen McMahon of the U.S. District Court for the Southern District of New York **addressed** the sufficiency of a securities fraud complaint in Huey v. Anavex, where the defendant's stock price rose on the day of the alleged corrective disclosure and declined on subsequent days, both consistent with market movements on those dates.[9]

The operative complaint alleged Anavex had issued materially false or misleading statements related to an endpoint used in its clinical study of a drug.[10]

Judge McMahon held that lead plaintiff failed to plead loss causation because, on the day of the alleged corrective disclosure, the company's stock price went up, not down, and the stock price decline on the following two days tracked the direction of leading market indices.[11]

In light of the stock price movements, Judge McMahon concluded that amendment would be futile, dismissing the complaint with prejudice.[12]

**The Anavex Second Circuit Decision**

The Second Circuit panel of U.S. Circuit Judges Guido Calabresi, Dennis Jacobs and Alison Nathan affirmed Judge McMahon's decision, concluding that the lead plaintiff's pleadings did not explain why her loss was delayed and why it was caused by Anavex's corrective disclosure, rather than by broader market forces.[13]

The Second Circuit explained that, under the pleading standard derived from the U.S. Supreme Court's 2009 **ruling** in Ashcroft v. Iqbal, a "plausible causal link is easy to establish where the share price declines" following a corrective disclosure "while the market does not."[14] When that is not the case, however, the Second Circuit made clear that "more must be pleaded" — specifically, facts that, if proven, would show that any loss was caused by the alleged misstatements rather than intervening events.[15]

Expanding on the inquiry set forth in Lentell, the Second Circuit tasked courts to "conduct a precise inquiry to ascertain the plausible existence of [a] causal link and proximity."[16] As a part of that inquiry, the Second Circuit explained that courts must view loss causation allegations in a fraud-on-the-market case in the context of the market's broader movements, as well as the time gap between the corrective disclosure and the alleged loss.[17]

Indeed, the Second Circuit took judicial notice of Nasdaq Composite data in the days following the corrective disclosure "to provide objective market context against which the plaintiff's allegations could be evaluated."[18]

Notably, the Second Circuit expressly declined to adopt a categorical rule requiring a company's stock price to fall immediately after a corrective disclosure.[19] It held, however, that where a plaintiff's loss occurs some time after the corrective disclosure, it is the plaintiff's burden to plead facts showing why the loss was not immediate.[20]

The Second Circuit explained that "the necessary showing at the pleading stage increases — sometimes dramatically — where the loss does not immediately follow the corrective disclosure."[21] Moreover, where the market also declines on the days of the alleged losses, a plaintiff's "plausibility burden increases further."[22]

Assessing the particular allegations in the case, the Second Circuit faulted the lead plaintiff for failing to plead facts explaining why the stock price decline was delayed or why the increase in Anavex's share price on the day of the corrective disclosure did not cut against the plausibility of her loss causation allegations.[23]

The Second Circuit ultimately determined that the lead plaintiff's complaint provided "no indication" of the aforementioned factors and thus concluded that the initial increase in Anavex's share price, the correlation with the market over the next two days and the delayed loss all undermined the plausibility of a causal link, making dismissal appropriate.[24]

**Looking Ahead**

Loss causation is one of the most extensively litigated issues in motions seeking to dismiss securities fraud complaints. In Huey, the Second Circuit appears to have increased the burden on lead plaintiffs in pleading loss causation — and district courts in evaluating such a pleading — where there is no immediately evidenced causal link, i.e., no immediate share price decline following the corrective disclosure that deviates from the market returns on that date.

Importantly, the Second Circuit's reasoning appears to apply broadly to any situation in which there is any disconnect between the price reaction and the lead plaintiff's loss, and in such circumstances requires the lead plaintiff to say more and provide some indication of why the disconnect exists to plausibly establish causation.

This approach generates new questions that the district courts must grapple with. For instance, which particular factual circumstances will require a lead plaintiff to plead more? Is a delayed price decline that is inconsistent with the market movements sufficient? Is an immediate stock price decline that corresponds with the market movements on that date sufficient? District courts will be left to draw those lines.

Similarly, what is the more that lead plaintiffs must plead?

While the Second Circuit was clear that it is not requiring the district courts to conduct event studies at the pleading stage, it nevertheless has articulated a standard pursuant to which lead plaintiffs are now required to plead facts explaining why their loss is still plausible in the face of the underlying share price and market movements. Ultimately, future securities decisions from district courts will demonstrate how the Second Circuit's decree applies to varying fact patterns.

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***Disclosure: Skadden represented Merril Lynch in Lentell v. Merrill Lynch & Co.***

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[1] Huey v. Anavex Life Scis. Corp., No. 25-1752, 2026 WL 1838665, at *9-12 (2d Cir. June 26, 2026).

[2] Lentell v. Merrill Lynch & Co., 396 F.3d 161 (2d Cir. 2005).

[3] The Private Securities Litigation Reform Act ("PSLRA") provides that "the plaintiff shall have the burden of proving that the act or omission of the defendant alleged to violate this chapter caused the loss for which the plaintiff seeks to recover damages." 15 U.S.C. §78u-4(b)(4).

[4] 396 F.3d at 164-66.

[5] Id. at 172 and 174; see also In re: Merrill Lynch & Co. Inc., 273 F. Supp. 2d 351, 362 (S.D.N.Y. 2003), aff'd sub nom. Lentell v. Merrill Lynch & Co., 396 F.3d 161 (2d Cir. 2005) ("There was no causal connection between the burst of the [Internet] bubble and the alleged omissions; it was the burst which caused the market drop and the resultant losses a considerable time thereafter when plaintiffs decided it was time to sell.").

[6] Id. at 174, 173 and 175.

[7] Id. at 176-77.

[8] Id. at 174.

[9] Huey v. Anavex Life Scis. Corp., No. 24-CV-01910 (CM), 2025 WL 1707581 (S.D.N.Y. June 18, 2025), aff'd, No. 25-1752, 2026 WL 1838665 (2d Cir. June 26, 2026).

[10] Id. at *3.

[11] Id. at *6-8.

[12] Id.

[13] Huey v. Anavex Life Scis. Corp., No. 25-1752, 2026 WL 1838665, at *11 (2d Cir. June 26, 2026).

[14] Id. at *8.

[15] Id.

[16] Id. at *9.

[17] Id.

[18] Id. at *9 n.17.

[19] Id. at *8.

[20] Id. at *9.

[21] Id. at *10.

[22] Id.

[23] Id. at *11.

[24] Id. The court noted that on the day of the corrective disclosure, February 7, Anavex's share price increased by 5.8% and from market close on February 6 to market close on February 8, the stock price fell only 1.6%. Id. at *9. Over that same period, however, the Nasdaq Composite stayed essentially level (0.2%) and the share price did not materially decline more than the market until February 9 (4.8% vs. 1.0%). Id.