

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-2080

IN RE: DISCOVERY LABORATORIES SECURITIES LITIGATION

THE MIZLA GROUP
(JOSEPH, DENISE, ALAN, ERIN, JULIA MIZLA)
and CLAIRE SPOONER,
Appellants

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 06-cv-01820)
District Judge: Honorable Stewart Dalzell

Argued March 25, 2008

Before: McKEE, RENDELL and TASHIMA*, Circuit Judges

(Filed: April 29, 2008)

James R. Malone, Jr., Esq. **[ARGUED]**
Chimicles & Tikellis
361 West Lancaster Avenue
One Haverford Centre
Haverford, PA 19041
Counsel for Appellants The Mizla Group

* Honorable A. Wallace Tashima, Senior Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

Carol A. Mager, Esq
Mager & Goldstein
1818 Market Street, Suite 3710
Philadelphia, PA 19103
Counsel for Appellant Claire Spooner

Robert L. Hickok, Esq. [ARGUED]
Christopher J. Huber, Esq.
Gay P. Rainville, Esq.
Pepper Hamilton
18th & Arch Streets
3000 Two Logan Square
Philadelphia, PA 19103
Counsel for Appellees

OPINION OF THE COURT

RENDELL, *Circuit Judge*.

Plaintiffs, the Mizla Group and Claire Spooner, appeal the dismissal of their Second Amended Complaint (“the Complaint”) in a securities class action. In the Complaint, they alleged violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated under the Act, 17 CFR § 240.10b-5, by defendants, Discovery Laboratories, Inc. (“Discovery”), Robert Capetola, President and Chief Executive Officer of Discovery, and Christopher Schaber, former Chief Operating Officer of Discovery. The District Court considered the claims in the Complaint in a lengthy opinion and ultimately dismissed each claim for failure to sufficiently plead materiality and/or scienter under the heightened pleading standards of

the Private Securities Litigation Reform Act. The plaintiffs appeal the dismissal of the majority of their claims, but have abandoned or waived others.¹

We find the District Court's opinion well-reasoned and do not find that any of the issues before us constitutes grounds for disturbing or varying from its analysis.

Accordingly, we will affirm the dismissal of the complaint for the reasons set forth therein.

¹ In particular, we note that appellants appeal the dismissal of their allegations relating to statements made regarding the likelihood of approval by the European Medicines Evaluation Agency only on the basis of materiality. The District Court, however, dismissed those allegations based on insufficient pleading of scienter as well, and appellants do not challenge that determination on appeal. Thus, a ruling in their favor on the materiality issue would be unavailing.