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NEWSLETTER

Aggregated Damages in a Class Action Suit Found Inconsistent with the PSLRA

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In a case of first impression, a Pennsylvania federal court determined that class action damages based on a trading model that aggregated damages was not an acceptable method for assessing damages under the Private Securities Litigation Reform Act (PSLRA). *Robert K. Bell, et al., v. Fore Systems, Inc. et al.*, No. 97-1265 (W.D. Pa. August 2, 2002). The court has certified its order for interlocutory appeal to the Third Circuit.

The ruling on appropriate methodology for calculating damages resulted from defendants' motion in limine to exclude testimony from plaintiffs' expert witness on damages in a securities fraud class action. That witness used a damages model that calculated "aggregate damages" by multiplying the estimated number of damaged shares by the estimated artificial inflation for each day of the class period. The defendants argued that combined damages were inconsistent with the PSLRA, which mandated an individual damages limitation for each plaintiff.

The court agreed with the defendants. The applicable section of the PSLRA provides a limitation of damages whereby an "award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received...and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." The statute also contains a provision to establish damages for individuals who sell their shares during the 90-day "look back" period. The court noted that the text in this section of the PSLRA refers to the limitation as to each "plaintiff" rather than the "class." The court held that to apply properly the statutory mandate that a plaintiff's damages not exceed the damages limitation formula, the fact finder must determine the purchase price actually paid and sale price actually received by that plaintiff and the mean trading price of the security for the ninety-day "look back" period after the correcting information was disseminated to the market. Thus, the court concluded that "the [l]imitation on [d]amages cannot be imposed on the class as a whole, but must be applied to the circumstances of each plaintiff."

Based on this ruling, the court bifurcated the case into two phases: a class action phase and a plaintiff-specific phase. This first phase would resolve "whether each defendant (1) made a misstatement or omission of a material fact; (2) with scienter; (3) in connection with the purchase or sale of a security." The court also included in this phase the issues of whether the class members purchased securities in an open market that was affected by the misrepresentation and the tentative amount of damages per share based on the amount

of inflation per share for several time segments. The court reserved for the second phase resolution of any remaining, plaintiff-specific issues, including whether the plaintiff purchased shares during the class period, whether the defendants can rebut any "fraud on the market" presumptions, and the actual damages calculation for each individual plaintiff based on the actual purchase and sale data and the "look back" period. The court stated that it anticipated that "[f]or the vast majority of the plaintiffs...Phase II proceedings will not be necessary."

The court acknowledged inefficiencies in individual determinations of damages as well as bifurcation and recognized that an appellate court may deem aggregate class damages acceptable. The court also acknowledged that its interpretation of the PSLRA "is at odds with current litigation practices" and "forthrightly admits that its proposed bifurcation of issues is based on practicalities rather than precedent." The court therefore certified its order for interlocutory appeal *sua sponte*.

For more information, please contact one of WRF's Professional Liability Attorneys at 202.719.7130