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NEWSLETTER

District Court Rejects Lead Plaintiff “Groups” under PSLRA

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The court in *In re Network Associates, Inc. Securities Litigation*, No. C99-1729 WHA (N.D.Cal. Nov. 22, 1999) (consolidated with Case Nos. 99-2686 and 99-4137), has rejected the attempt by two "groups" of unaffiliated investors, one created by the Milberg Weiss law firm and the other by the Weiss & Yourman law firm, to be named lead plaintiff in this class action securities case. Exhorting the goal of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), the court named the single institutional investor with the largest financial stake in the outcome of the litigation to serve as lead plaintiff, and instructed that lead plaintiff to select counsel through a solicitation process.

The court first criticized the efforts of the Milberg and the Weiss firms of creating "groups" in an attempt to secure lead plaintiff status. The court noted that the law firms each attempted to attract the largest number of investors with the greater amount of collective financial interest to serve as "plaintiff," then nominated a smaller subset of the group to serve as "lead plaintiff." According to the court, these large groups of unaffiliated investors were not the lead plaintiffs contemplated by the PSLRA. Rather, the PSLRA's goal was to eliminate the practice of plaintiffs' firms selecting persons to serve as lead plaintiffs in name only, leaving decision-making authority entirely in the hands of counsel. According to the court, the practice of creating "groups" to serve as lead plaintiff merely re-instituted the pre-PSLRA state of affairs, as these unaffiliated groups could not have the cohesiveness and centrality of purpose to monitor and manage plaintiffs' counsel. The court thus exercised its discretion and rejected both groups' effort to be named lead plaintiff.

Each law firm suggested that one of its group members was an institutional investor with the largest financial interest in the outcome of the litigation, and therefore the "presumptive" lead plaintiff. The court rejected each of these possibilities, finding that the Weiss firm's candidate lacked experience and a commitment to the litigation and that the Milberg firm's candidate had been implicated in a criminal fraud investigation. The court also noted that both candidates were foreign corporations, too distant from the forum to manage counsel diligently or to monitor the litigation. Accordingly, the court appointed the next most financially impacted institutional investor - the Board of Pensions and Retirement of the City of Philadelphia (the "Board"). The court described the Board's responsibilities as lead counsel and required the Board to solicit bids from law firms to act as plaintiffs' counsel.

Lastly, the court addressed issues arising from the animated dispute between the "Milberg alliance" and the "Weiss alliance." First, the court rejected Milberg's contention that Weiss violated federal securities laws by reimbursing brokers and dealers for the cost of distributing notices to investors, giving deference to the SEC's interpretation that this reimbursement was not criminal. Second, the court rejected the Weiss alliance's effort to disqualify the Milberg firm on the grounds that its practices were the reason Congress enacted the PSLRA. Third, the court opined that the Weiss group did not violate ethics rules by contacting investors that had joined the Milberg alliance to test the bona fides of Milberg's claims as to its group representation. Finally, the Court excoriated both law firms for the form of notices to investors that each firm used. The court called the notices "puff pieces steering investors toward registering with counsel and. . . . away from independently seeking the role of lead plaintiff."