

HP Escapes Shareholder Suit Targeting Former CEO

By **Kurt Orzeck**

Law360, Los Angeles (August 09, 2013, 10:46 PM ET) -- A California federal judge denied a proposed class action against Hewlett Packard Co. over former CEO Mark Hurd's behavior in the lead-up to his high-profile exit from HP, ruling Friday that a pension fund failed to satisfy materiality requirements for a securities fraud claim.

The judge said that it was irrelevant whether Hurd knowingly violated HP's standards of business conduct when the company revised them after a 2006 scandal involving information leaks, because SBCs are "inactionable puffery."

Lead plaintiff Cement & Concrete Workers District Council Pension Fund had alleged that the SBCs, along with related forms HP filed with the U.S. Securities and Exchange Commission, were false and misleading and thus in violation of securities laws.

"Adoption of the plaintiff's argument here would still render every code of ethics materially misleading whenever an executive commits an ethical violation following a scandal," U.S. District Judge Jon S. Tigar said.

The suit is one of many filed in the wake of Hurd's 2010 departure from HP.

After the 2006 scandal, which implicated HP executives and members of its board of directors, HP and Hurd amended the company's SBC in May 2008 and 2010 to restore confidence among HP employees and shareholders, the plaintiff claimed.

Hurd said in the 2008 SBC that he wanted "to build trust in everything we do by living our values and conducting business consistent with the high ethical standards embodied within our SBC," court filings said.

All the while, Hurd was knowingly violating the revised SBC through his relationship with Jodie Fisher, an HP contractor who had a past career in adult films, according to the shareholders.

While Hurd settled sexual harassment claims with Fisher, HP's board asked him to step down after an investigation revealed he fudged financial reports to conceal the relationship and paid Fisher for work she hadn't performed.

Hurd resigned Aug. 6, 2010, and a week later, HP's share price dropped 12.6 percent, court filings said.

Shareholders sued on behalf of those who bought HP stock between November 2007 and August 2010 and held the shares as of Aug. 6, 2010. They alleged that HP and Hurd made false and misleading statements prior to his resignation.

They alleged that Hurd had a duty to disclose any conduct in violation of the SBC and that the company filed similarly misleading SEC forms during the class period.

The pension fund claimed that investors would have been looking for publicly available information, such as SBCs, indicating whether HP had revised its practices following the 2006 scandal.

Defendants' attorneys argued that the SBCs and SEC forms weren't material and that the plaintiff had failed to plead falsity, scienter or loss causation, such as they are required for securities fraud claims.

Judge Tigar said Friday that the complaint didn't identify any section of the SBCs that would have been rendered false or misleading had Hurd been violating them, according to the judge.

Likewise, the SEC forms that HP filed, like the SBCs, were vague and routine statements concerning the retention of executives in general, the Friday opinion said. Thus, they weren't material to the securities fraud claims.

Judge Tigar granted the defendants' motions to dismiss the suit, with leave to amend.

Attorneys for HP declined comment Friday.

Attorneys for the plaintiffs and Hurd didn't immediately respond to requests for comment Friday.

Cement & Concrete Workers District Council Pension Fund and Retail Wholesale & Department Store Union Local 338 Retirement Fund are represented by Lionel Z. Glancy and Robert V. Prongay of Glancy Binkow & Goldberg LLP and Ira M. Press and Sarah G. Lopez of Kirby McInterney LLP.

HP is represented by Marc Sonnenfeld, Robert Gooding, Joseph Floren, Jennifer Bagosy, of counsel Karen Pohlmann, Jason Wilson, Laura Hughes and Kimberly Kane of Morgan Lewis & Bockius LLP.

Hurd is represented by Lawrence D. Lewis, Dwight L. Armstrong, Keith Paul Bishop and Amy Wintersheimer Findley of Allen Matkins Leck Gamble Mallory & Natsis LLP.

The case is Cement & Concrete Workers District Council Pension Fund et al. v. Hewlett Packard Company et al., case number 3:12-cv-04115, in the U.S. District Court for the Northern District of California.

--Additional reporting by Carolina Bolado and Evan Weinberger. Editing by Melissa Tinklepaugh.