

Brocade, Ruckus Shake Shareholder Suit Over \$1.2B Deal

By **Melissa Daniels**

Law360, Los Angeles (June 30, 2017, 5:26 PM EDT) -- A California federal judge tossed out a proposed shareholder class action alleging securities fraud against Brocade Communications over its acquisition of Ruckus Wireless Inc., valued at about \$1.2 billion, saying the shareholder plaintiffs repeatedly failed to show how the companies misled them in financial statements over the offer.

The city of Pontiac's pension system, which sued on behalf of other Ruckus shareholders, alleged misrepresentations about the companies' share values involved in the tender offer, as well as breach of fiduciary duty against individual defendants connected to the deal.

The plaintiffs identified an allegedly misleading statement related to a discounted cash flow (DCF) analysis from Morgan Stanley that didn't reveal it was based on an assumption of Brocade's standalone stock value. But U.S. District Judge Edward Chen said this argument didn't meet the standards for a materially misleading statement.

"It is important to put the DCF analysis in context," the judge said. "It was one of several models of financial analyses which informed Morgan Stanley's opinion as to the fairness of the other consideration to Ruckus shareholders. Lead plaintiff has not shown how the standalone share value of Brocade stock, which allegedly was omitted from the DCF analysis, was material to the overall multifaceted financial analysis."

Judge Chen also said the plaintiffs failed to adequately plead scienter.

"Lead plaintiff has failed to adequately allege that these defendants knew or should have known that the implied Brocade stock standalone value was \$13.58 to \$19.52 per share (i.e., overinflated)," he said.

Judge Chen dismissed the case with prejudice, citing a previous opportunity for the plaintiffs to amend their case.

Brocade announced the Ruckus acquisition in April 2016, saying the deal would expand its network solutions offerings and help customers prepare for emerging technologies such as the so-called internet of things and new cellular data networks. The deal closed in May of that year.

The initial shareholder suit was filed in June 2016. Judge Chen dismissed a first amended complaint in February with leave to amend, saying that the plaintiffs needed to show an intent to deceive or deliberate recklessness involved in their claims.

The second amended complaint said that the acquisition was based on "a flawed process" with conflicts of interests over who would benefit from the deal as well as material omissions in the 14D-9 recommendation that Ruckus shareholders tender their shares to Brocade relating to the Morgan Stanley analyses.

In April, the defendants filed a motion to dismiss that said the second amended complaint still failed to cure the deficiencies by failing to explicitly show the what and why of the misleading statement. The defendants also noted that the Morgan Stanley fairness opinion that included the DCF analysis was one of 20 reasons supporting the Ruckus board's recommendation.

Judge Chen said that even if the DCF analysis was central to Morgan Stanley's fairness opinion and contained some sort of overinflated value, the shareholders "effectively conceded" that there was no problem with Morgan Stanley's bottom-line DCF valuation.

"If the value of the merger consideration (\$17.61-\$22.35) was correct or reasonable, the court does not see how the implied value of Brocade stock standalone was material to a Ruckus shareholder in deciding whether or not to tender her shares in exchange for that consideration," Judge Chen said.

Though the plaintiffs also brought state claims, Judge Chen declined to consider them as a result of the federal claims dismissal.

Joseph Floren of Morgan Lewis & Bockius LLP, who represented Brocade and Ruckus, told Law360 that "we are very pleased with the result and gratified that the court has agreed the plaintiffs' claims had no merit."

A representative for the plaintiffs declined to comment.

The plaintiffs are represented by lead counsel David T. Wissbroecker, Randall J. Baron and A. Rick Atwood Jr. of Robbins Geller Rudman & Dowd LLP.

Individual defendants are represented by Laura Kabler Oswell of Sullivan & Cromwell LLP.

Morgan Stanley & Co. LLP is represented by David Priebe and Isabelle L. Ord of DLA Piper LLP.

Brocade Communications Systems Inc. and Ruckus Wireless Inc. are represented by Joseph E. Floren, Kevin M. Benedicto, Marc J. Sonnenfeld and Karen Pieslak Pohlman of Morgan Lewis & Bockius LLP

The case is *Hussey v. Ruckus Wireless Inc. et al.*, case number 3:16-cv-02991 in the U.S. District Court for the Northern District of California.

--Additional reporting by Matt Chiappardi and Matthew Perlman. Editing by Orlando Lorenzo.