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General Cable Ducks Suit Over Accounting Errors, Theft

By **Ben Conarck**

Law360, New York (January 28, 2015, 2:29 PM ET) -- A Kentucky federal judge on Tuesday tossed a proposed securities class action that took aim at global industrial cable and wire manufacturer General Cable Corp., citing a lack of evidence that its senior executives covered up accounting errors and theft in its Brazil division.

U.S. District Judge William Bertelsman ruled that the investors failed to prove General Cable senior executives Gregory B. Kenny and Brian J. Robinson intentionally hid accounting mishaps and an inventory theft scheme occurring in its Brazilian operations to avoid a dip in stock prices.

“Plaintiffs state a bevy of general allegations related to scienter, perhaps attempting to make up in quantity what they lack in substance,” Judge Bertelsman said in the ruling. “The bulk of these allegations would apply to any corporation that has restated financial results, and thus a strong inference of scienter does not naturally follow.”

The complaint, filed on behalf of investors who purchased General Cable common stock between Nov. 3, 2010, and Oct. 14, 2013, asserted that senior executives allowed accounting errors and other financial reporting mishaps to go unchecked by taking a laissez faire approach to overseeing its operations in Brazil, a market the corporation entered in 2007 after acquiring Phelps Dodge International Corp.

The lack of oversight, the suit claimed, allowed for a sophisticated inventory theft scheme that resulted in the loss of millions of dollars’ worth of raw materials and finished goods. The plaintiffs also alleged that General Cable executives knew of the theft and other accounting errors in January 2012, but did not notify corporate headquarters until later that year in September.

In October 2012, according to the complaint, General Cable announced that financial statements filed from 2007 into the second quarter of 2012 were erroneous and said it would be restating 14 financial statements covering 2009 up to the second quarter of that year.

And in October of 2013, the suit claimed, General Cable announced it would need to restate the corrected financial statements along with other reports to correct errors that it discovered while fixing the mistakes that necessitated its first restatement.

The plaintiffs pointed in part to the magnitude of these restatements as evidence of false and misleading information, but Judge Bertelsman ruled that the scope of the errors did not indicate foul play.

“Recalling that the majority of errors were the result of a complex theft scheme, the duration of the errors speaks less to defendants’ states of mind and more to the thieves’ sophistication,” Judge Bertelsman said in the ruling.

Marc Sonnenfeld, a partner at Morgan Lewis & Bockius LLC who led the team of attorneys that won the dismissal, lauded the judge’s ruling on Wednesday.

“The judge accepted our argument that the company and the CEO and CFO were unaware of the problems leading to the restated financial results and that they addressed them when they became aware,” Sonnenfeld said.

The judge also cleared General Cable of allegations of corporate scienter, ruling that there was insufficient evidence that Mathias Sandoval, former Phelps Dodge CEO and top executive of General Cable’s Brazil division, acted with malice toward investors.

“Although Sandoval may have been aware of problems and failed to disclose them, there are no facts to support that he did so with intent to defraud,” Judge Bertelsman said.

City of Livonia Employees’ Retirement System, the lead plaintiff in the case, was represented by Robbins Geller Rudman & Dowd LLP.

General Cable and the individual defendants were represented by Morgan Lewis & Bockius LLP.

The case is City of Livonia Employees' Retirement System v. General Cable Corporation et al., case number 2:14-cv-00024, in the U.S. District Court for the Eastern District of Kentucky.

--Editing by Mark Lebetkin.
