

HP Beats Securities Suit Over \$1.3B Palm Acquisition

By **Django Gold**

Law360, New York (September 04, 2012, 5:45 PM ET) -- A California federal court last week followed through with the tentative dismissal of a putative class action over Hewlett-Packard Co.'s failure to implement webOS on its computers and mobile devices after its \$1.3 billion purchase of Palm Inc., finding HP's alleged misstatements to shareholders are shielded by securities law.

U.S. District Judge Andrew J. Guilford said that statements made by former HP CEO Leo Apotheker, current Chief Financial Officer Catherine Lesjak and current Executive Vice President Todd Bradley in which the executives allegedly misrepresented the company's plans for the Palm webOS platform are protected by the safe harbor provisions of the Private Securities Litigation Reform Act, dismissing the class action.

These purported misstatements, which investors claimed HP's representatives made during various conference calls and public meetings, contained sufficient disclaimers as to taking them without a grain of salt, Judge Guilford said.

"The cautionary statements accompanying the May 17, 2011, earnings conference call warned listeners of 'quality and other defects [that] may not be supported adequately by application software,' and referred to the possibility of 'defects in ... engineering, design and manufacturing,'" the judge said. "While these statements do not expressly refer to webOS, the cautionary language concerning software quality and engineering defects was sufficient to satisfy the safe harbor's threshold requirements."

Furthermore, the information relayed in that conference call and other meetings is "forward-looking and accompanied by meaningful cautionary language," the judge said. "Accordingly, these statements are protected by the PSLRA's safe harbor and cannot be used to establish defendants' liability."

The ruling allows HP and its executives to evade investor repercussions over its inability to integrate Palm's operating system into its PCs, Internet-connected printers, tablets and other mobile devices when HP acquired the struggling smartphone manufacturer in July 2010.

By acquiring Palm, HP sought to control both the hardware and software for its computing devices, according to the suit. Similar to how Apple's iPhone and iPad mobile devices run on its iOS operating system, HP sought to provide its customers with a single platform that could be run on its computers and other devices, according to the complaint.

The lawsuit, filed by shareholder Richard Gammel in September 2011, stems from the beating HP's stock took in the days after it announced it was abandoning its WebOS hardware operations on Aug. 18, 2011. HP shares dropped 6 percent on the day of the announcement and plummeted an additional 20 percent the following day.

The complaint alleges Apotheker and others at HP violated the Securities Exchange Act by making false statements about the health of its hardware electronics business. The complaint also accuses Lesjak of netting \$2.2 million through insider trading on artificially high stock prices and hiding problems with the company's tablets from investors.

However, Judge Guilford last week found that the PSLRA, which provides safe harbor for forward-looking statements, covers those comments investors claimed misled them as to HP's intentions, issuing a tentative ruling granting HP's motion to dismiss the class action and confirming it two days later on Aug. 29.

The final ruling gave plaintiffs 30 days in which to amend their pleading.

Attorneys for HP declined to comment on Tuesday. A representative for the plaintiffs was not immediately available for comment.

Gammel is represented by Mark Labaton of Motley Rice LLC and by Jonathan Gardner of Labaton Sucharow LLP.

HP is represented by Marc Sonnenfeld, Robert Gooding, Karen Pohlmann, Jennifer Bagosy, Monique Cho, Jason Wilson and Laura Hughes of Morgan Lewis & Bockius LLP. Apotheker is represented by Brad D. Brian, Gregory J. Weingart and Laura D. Smolowe of Munger Tolles & Olson LLP. Lesjak is represented by Wilson Sonsini Goodrich & Rosati PC. Bradley is represented by Kevin P. Muck and Marie C. Bafus of Fenwick & West LLP.

The case is Richard Gammel v. Hewlett-Packard Co. et al., case number 8:11-cv-01404, in the U.S. District Court for the Central District of California.

--Additional reporting by Jonathan Randles and Sindhu Sundar. Editing by Katherine Rautenberg.