

HP Boots Derivative Suit Over Alleged Bribes

By **Greg Ryan**

Law360, New York (March 22, 2012, 6:32 PM ET) -- A California federal judge on Wednesday tossed a shareholder derivative suit against Hewlett-Packard Co. and 11 of its current and former officers that targeted the company's alleged bribery of government contractors and vendors in order to sway federal contract awards.

U.S. District Judge Edward J. Davila granted three separate dismissal motions from HP, former CEO and chairman of the board Mark Hurd, and 10 current HP directors. The judge held that plaintiff Saginaw Police and Fire Pension Fund did not show that it had been excused from first making a demand on HP's board of directors over the claims at issue before bringing suit.

"Plaintiff has failed to allege particularized facts that any of the director defendants knew of violations and took no steps in good faith to prevent or remedy the situation," the judge said. "As such, plaintiff has not met its burden of showing that the defendants face a substantial likelihood of liability and demand is not excused for this claim."

Saginaw contended that HP had extensively violated anti-kickback statutes for eight years, handing out millions of dollars in so-called influencer fees to a number of federal contractors and vendors known as the Alliance Partners to sway the federal procurement process in its favor.

The suit, brought in October 2010, alleged the defendants "knowingly allowed and rewarded" the company's violation of the Anti-Kickback Act of 1986, the False Claims Act, the Truth in Negotiations Act and the Foreign Corrupt Practices Act from June 2007 until Dec. 31, 2009.

Saginaw referenced a U.S. Department of Justice suit brought against HP in 2007 over the central allegations at issue in its complaint.

In order to bring the derivative suit, Saginaw had to first make a demand on the HP board to examine the alleged wrongdoing, or show why such a demand was excused, according to Judge Davila. Saginaw argued that making a demand on the board would have been futile in this instance because the directors may have been liable for HP employees' purported false claims to the government, so any action would be against their self-interest.

But the investor fund did not specify that a board member knew of the alleged misconduct or failed to follow protocol that would have allowed it to check on employees' conduct, the judge said.

“The fact that HP was named as a defendant in the DOJ litigation or was the subject of FCPA investigations is not enough to conclude that the director defendants acted improperly and face a substantial risk of liability,” the judge said.

Saginaw also failed to demonstrate the board had not acted in good faith when it gave Hurd \$97 million in compensation. Hurd was terminated from HP in August 2009 following allegations of sexual harassment.

Judge Davila gave Saginaw leave to replead its claims.

Among the Alliance Partners, the suit claimed, were IT and information system makers Accenture, BearingPoint Inc., Cap Gemini Ernst & Young Inc., Electronic Data Systems Corp., GTSI Corp., Northrop Grumman Corp., Science Applications International Corp. and Unisys Corp.

An attorney for Saginaw could not be immediately reached for comment on the ruling. An HP spokesman declined comment.

Saginaw is represented by Mary K. Blasy and Anne Box of Scott & Scott LLP.

HP is represented by Franklin Brockway Gowdy, Diane L. Webb, Kim Alexander Kane, Marc J. Sonnenfeld, Karen Pieslak Pohlmann and Jill M. Baisinger of Morgan Lewis & Bockius LLP and Steven M. Schatz, Boris Feldman, Douglas J. Clark and Katherine L. Henderson of Wilson Sonsini Goodrich & Rosati PC.

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 other individual defendants are represented by Allen J. Ruby, Garrett J. Waltzer, Thomas V. Christopher and Richard S. Horvath Jr. of Skadden Arps Slate Meagher & Flom LLP.

The case is Saginaw Police and Fire Pension Fund v. Andreessen et al., case number 5:10-cv-04720, in the U.S. District Court for the Northern District of California.

--Editing by Kat Laskowski.