

CORRECTED: HP Wants Investor Suit Over Ex-CEO's Misconduct Tossed

By **Beth Winegarner**

Law360, San Francisco (May 29, 2014, 9:48 PM ET) -- Hewlett Packard Co. urged a California federal judge on Thursday to chuck a proposed shareholder class action claiming stock prices dipped after CEO Mark Hurd was ousted over his relationship with a female contractor, arguing investors haven't shown they relied on company statements suggesting Hurd followed HP's code of ethics.

HP's attorney Laura Hughes of Morgan Lewis and Bockius LLP argued that companies' "standards of business conduct" are commonly distributed to employees, but that nothing in HP's document promises that all employees comply with it. When presiding U.S. District Judge Jon S. Tigar dismissed the suit in August, he said that adopting the shareholders' logic would render every company's code of ethics misleading when an employee commits misconduct.

"The investors obviously care about the integrity of the CEO. But this document doesn't make any representations about Mr. Hurd's compliance," Hughes argued, saying it therefore can't be actionable in the case.

Hurd's attorney Lawrence Lewis of Allen Matkins Leck Gamble Mallory & Natsis LLP argued that Hurd never stated that HP had absolute compliance with its code of ethics: "If such statements were made, we'd be talking about a much different case."

Lewis added that Hurd wouldn't have thought that anyone would rely on nonmaterial factors, such as HP's code of ethics, to make investment decisions.

But the plaintiffs' attorney Thomas Elrod of Kirby McInerney LLP argued that HP claimed it would refuse to accept or tolerate sexual harassment, including sexual advances, among employees. That turned out to be false when it was revealed that HP contractor Jodie Fisher had accused Hurd of making unwanted advances, according to the shareholders.

"HP made statements that elevated the idea that others followed [the code]," Elrod further argued. "To the extent the investors thought it was material, I think the stock performance, the fact that \$10 billion in shareholder value was wiped away, suggests it was."

Judge Tigar pointed out that Hurd would have had to leave anyway because of his relationship with Fisher as well as allegations that he filed inflated expense reports. The judge suggested that investors were reacting to the news of Hurd's departure and asked what effect the code of ethics had on the chain of events.

Elrod said that Hurd was forced to resign for violating that code and later acknowledged that he lied about following it.

Judge Tigar took the motion under submission and did not indicate how he would rule.

The shareholders sued in 2012 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.

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 Thomas W. Elrod, Ira M. Press and Sarah G. Lopez of Kirby McInerney LLP.

HP is represented by Marc J. Sonnenfeld, Robert E. Gooding Jr., Joseph E. Floren, Jennifer R. Bagosy, Karen P. Pohlmann, Jason H. Wilson, Laura E. Hughes and Kimberly A. Kane of Morgan Lewis & Bockius LLP.

Hurd is represented by Lawrence D. Lewis and others at Allen Matkins Leck Gamble Mallory & Natsis LLP.

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

--Additional reporting by Kurt Orzeck. Editing by Edrienne Su.

Correction: An earlier story mischaracterized the nature of Hurd's relationship with Fisher. The error has been corrected.