

Disclosure

Compuware Must Face Investor Claims It Obscured Problems With IBM Relationship

The U.S. District Court for the Eastern District of Michigan Feb. 3 ruled that Compuware Corp. investors may proceed with would-be class securities fraud claims over the software firm's alleged concealment of the disintegration of a key business relationship with International Business Machines Corp. (*In re Compuware Securities Litigation*, E.D. Mich., Civil No. 02-73793, 2/3/04).

Judge Anna Diggs Taylor found that--with slight exceptions--the plaintiffs "have submitted a well-crafted, well-pled complaint, stating sufficient facts to create a plausible inference that Defendants knowingly misstated or omitted material information."

Relationship Begins to Deteriorate

The court related the following background from the complaint. The plaintiffs are an as yet uncertified class of public investors who purchased defendant Compuware's common stock from June 26, 1999 to April 3, 2002. Compuware provides computer software and consulting services, primarily for use with mainframe and client/server systems.

IBM and Compuware maintained a mutually beneficial relationship for many years whereby Compuware developed operating systems and software designed to run on IBM mainframe computers. In order to sustain this relationship, IBM openly shared information about its operating systems and critical software, and allowed Compuware access to IBM source code information.

"By late 1997 or early 1998, although undisclosed to Compuware's investors, its relationship with IBM began to deteriorate. The price of Compuware software was elevating the cost of IBM mainframes unnecessarily, IBM felt," the court said. IBM officials allegedly informed Compuware of these concerns.

On Aug. 1, 2000, IBM announced the release of its new products, File Manager and Fault Analyzer. "IBM specifically offered a one-time discounted upgrade 'for customers currently using competitive error capture, reporting and analysis tools such as Compuware Abend-AID and File-AID,'" the court noted.

Additionally, the court said, in late August 2000, IBM allegedly informed a Compuware employee that IBM would not share a testing version of a particular IBM software product due to the increasingly competitive relationship between the two companies. Compuware allegedly had knowledge of this development.

Allegedly Misleading Statements

The plaintiffs maintained that in public filings and press releases throughout the class period, Compuware and certain of its officials made false and misleading statements that "wrongly communicated that IBM's development of competing products was a mere risk while knowing that IBM was, in actual fact, developing competing software and overtaking Compuware's software market share by selling it more cheaply," the court wrote. Compuware also allegedly failed to communicate that its development of mainframe software was in jeopardy because IBM now

refused to share its source codes, a factor substantially impacting Compuware's competitive capacity.

On March 12, 2002, the court continued, Compuware filed a lawsuit against IBM alleging copyright infringement, antitrust violations, and unfair trade practices. In a footnote, the court advised that this litigation is still pending. In its suit, Compuware alleged that in 1999, IBM began to compete unfairly with Compuware. Among other specifics, Compuware asserted that IBM copied portions of Compuware's source code.

On April 3, 2002, Compuware issued a press release stating that it would take a goodwill impairment charge of \$323 million and restructuring charges of \$45-55 million for cutting jobs and closing offices. Compuware shares fell from \$11.10 per share on April 3 to \$8.28 per share on April 4, 2002.


Strong Inference


The court here found that the plaintiffs were entitled to proceed with the bulk of their 1934 Securities Exchange Act Section 10(b) claims. "Plaintiffs have presented allegations giving rise to the strong inference that Defendants well knew of the increasingly serious threat that IBM posed, and that Compuware's worsening relationship with IBM would adversely affect Compuware's business. Nevertheless," the court said, "Compuware and its named executives continued to make favorable statements as to the company's solid position and lack of impediments to progress." The court found that there is a " 'substantial likelihood that the disclosure of the omitted fact[s] would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.' "


In other specifics, the court found that the "Plaintiffs have sufficiently alleged both transaction and loss causation as required in order to survive dismissal." The court further determined that the complaint was timely filed. In this regard, the court said that the "Sarbanes-Oxley Act's two (2) year limitations period applies here. ... [T]he relevant date with which plaintiffs are charged as having discovery notice is March 12, 2002, the day when Compuware filed suit against IBM and disclosed to the relevant market, its shareholders. Inasmuch as Plaintiffs filed the initial complaint in this lawsuit on September 20, 2002, Plaintiffs' Complaint is not time barred."


Meanwhile, the court found that certain allegations were not adequately pleaded. In particular, the court found that the allegations as to defendant Compuware executive Elizabeth Chappell's statements in a challenged Jan. 25, 2000, press release fail to specify her "personal state of mind when she spoke or authorized the press release." Moreover, as to Chappell's challenged statements in a May 1, 2000, press release, the court found that the plaintiffs failed to allege with sufficient particularity that "Defendant Chappell, herself, spoke with actual knowledge that her statements were false." In other matters, the court found that the pleadings as to defendant Compuware executive Joseph Nathan's statement in a July 19, 2001, press release do not offer "any allegations of scienter." These allegations are dismissed with leave to amend, the court specified.

Lead plaintiff Houston Municipal Employees Pension System was represented by Daniel S. Sommers, Julie Goldsmith, Cohen, Milstein, Hausfeld & Toll, Washington. Liaison counsel for the lead plaintiff was E. Powell Miller, Marc Newman, Miller Shea, Troy, Mich.

Counsel for the Compuware defendants was Stephen Wasinger, Joseph Saulski, Wasinger, Kickham and Hanley, Royal Oak, Mich. 

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