

Outbreak of shareholder suits snags Comerica, Compuware

Firms accused of withholding their bad news

By Katie Merx

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Correction:

A Page 3 story in the Nov. 4 issue about class-action lawsuits filed against Comerica Inc. (NYSE: CMA) and Compuware Corp. (Nasdaq: CPWR) should have said 80 percent of Compuware's product revenue comes from the mainframe computer sector, not just IBM Corp.

Original article:

Angry shareholders last month added Comerica Inc. and Compuware Corp. to the rapidly growing list of securities lawsuits that accuse corporations of telling investors too little, too late about bad financial news.

Analysts and securities lawyers said the companies aren't alone in their battles.

Securities class-action lawsuits rose 60 percent from 2000 to 2001. Several lawyers and analysts expect the 2002 total to rise even higher because businesses aren't doing as well as they had hoped, and shareholders are suspicious of executives.

Five class-action lawsuits have been filed against Comerica in the last month, accusing the Detroit-based bank of artificially inflating earnings between July 17 and Oct. 1. The lawsuits accuse the bank of materially misrepresenting the dropping value of its money-management subsidiary, Munder Capital Management, and of failing to set aside enough for prospective loan losses until federal examiners forced it to.

Comerica announced Oct. 2 that it would take a \$328 million write-down to cover those changes.

Compuware faces two class-action lawsuits, filed in September and October. The suits allege that the Farmington Hills-based technology company misled investors about its relationship with IBM Corp. in its quarterly U.S. Securities and Exchange Commission filings and in news releases between Jan. 1, 1999, and April 3 of this year.

IBM accounts for 80 percent of Compuware's software business and 36 percent of its total revenue. In March, Compuware executives revealed that the relationship with IBM has been troubled since 1999. That year Compuware filed suit against Big Blue, alleging anti-competitive schemes, among other things.

The class-action suit alleges that Compuware refused to reveal the problems until this year. It cites 12 news releases issued since January 1999, none of which allude to problems with IBM.

"The (Comerica) lawsuits are without merit, and we will contest them vigorously. But because of pending litigation, we can't say anything more," said Wayne Mielke, Comerica's vice president of corporate communications.

Compuware's director of investor relations, Lisa Elkin, said the company wouldn't comment.

E. Powell Miller, an attorney and a partner at Miller Shea P.C. in Troy who is representing plaintiffs in two Compuware and two Comerica class actions, said investors deserve compensatory damages for the millions they lost because of corporate misrepresentations.

Any corporation announcing bad financial news in an economy scarred by a shaky stock market and myriad accounting changes and scandals faces a shotgun approach when it comes to class-action lawsuits until news improves, analysts said.

Troy-based companies Kmart Corp. and Lason Inc. face similar accusations.

The number of businesses slapped with federal securities class-action litigation grew 60 percent in 2001 to 327, compared with the 204 companies sued in 2000, according to a report by the Stanford Law School Securities Class Action Clearinghouse in Stanford, Calif., and Cornerstone Research of Menlo Park, Calif. The market-capitalization losses during the class periods grew, too, to \$2 trillion in 2001 compared with \$1.27 trillion in 2000.

The same study reports that in the 1990s, between 70 percent and 80 percent of cases reached settlements within five years.

Experts forecast the number of cases, and the awards they seek, to grow yet again in 2002.

But analysts, lawyers and pundits are divided over whether that growth in filings depends on an increase in improper actions.

"We're in a new environment after Enron (Corp.), the others and the Sarbanes-Oxley Act," said Dan Stephenson, co-leader of the litigation practice at Detroit-based Dykema Gossett P.L.L.C. "I believe we'll see more lawsuits in part simply because the market has gone down. There's an inverse correlation between the market going down and securities lawsuits going up."

"The first thing that grabs the attention of a plaintiffs' securities lawyer is a large downswing in the stock."

David Hester, senior vice president and branch manager of the Robert W. Baird & Co. office in Birmingham, said every company has been under the looking glass during the current economy, whether it's warranted or not.

"This year there's really been a shotgun approach," Hester said. "We are really seeing a lot of lawsuits pop up against companies."

"I think everyone is becoming very shortsighted. There are going to be bumps in the road. Most companies were expecting better results than they've seen this year."

Comerica's need to increase its loan-loss reserves was unpredictable, Hester said. Many companies had similar situations. Few foresaw the depressed financial results lasting this long, he said.

"Everyone is trying to play that (class action) card," Hester said.

Jeff Saut, chief investment strategist for Raymond James Financial Inc., said U.S. investors are nuts.

"In this litigious society, certainly it is not the investors' fault if they lose money in the stock market," Saut said sarcastically.

"It's a very common occurrence, especially when you get in a bear market, for shareholders to sue when their stock loses value. But where is it written that investors are entitled to make money? Markets go down just as often as they go up. ... There's no malfeasance at Comerica."

Beverly Moore Jr., a lawyer and editor of Class Action Reports, said it's a myth that a large stock drop automatically triggers the filing of class-action suits.

"The (class-action lawsuits) that are frivolous are thrown out," said Moore, whose Washington-based bimonthly periodical keeps track of all class-action lawsuits. "The ones that are meritorious are still being thrown out."

"We don't know what our corporations are actually making, which is supposed to be what fuels the stock market. We've got to make investors (better) able to sue."

Moore, who has followed class-action litigation for 30 years, said she's never seen a judge certify a frivolous class-action lawsuit.

The next step for the Comerica and Compuware cases is to determine which of the law firms will act as the lead lawyers and which plaintiffs will be named as the lead plaintiffs, said attorney Miller.

After the consolidated, amended complaints are filed, which Miller expects to occur in December, Comerica and Compuware are likely to ask for their cases to be dismissed, lawyers said. Then a judge will determine whether either of the cases will proceed to trial.

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