

Securities Legal Update

Simmonds Short-Swing Profits Cases Dismissed with Prejudice **03/16/09**

Lane Powell teamed with national law firms in successfully defending eight investment bank clients in 54 derivative shareholder actions, brought in federal court in Seattle late in 2007. These dismissals will eliminate exposure to untold millions of dollars in damage claims.

In an [order](#) filed on March 12, The Honorable James Robart, United States District Court for the Western District of Washington, granted issuer Motions to Dismiss in the 30 cases in which the issuers had filed the motions. That dismissal was based on an inadequate demand made by Plaintiff to the issuers and is without prejudice. In the remaining 24 cases, Judge Robart granted our eight underwriter defendants' omnibus Motion to Dismiss the complaints with prejudice.

Summary

While still a college student several years ago, plaintiff Vanessa Simmonds purchased small blocks of stock in initial public offering ("IPO") tech companies that had been defendants since 2001 in a multi-district securities fraud class action in New York. (Simmonds is the daughter of one of the plaintiff's lawyers in the Seattle cases.) The underwriters of those IPOs, who are Lane Powell's clients in the Seattle cases, were also defendants in the New York action. The attorneys at Lane Powell worked with prominent national law firms who had been representing the investment banks in the New York case, all of whom retained Lane Powell as local counsel in the Seattle case.

Analysis

Unlike the New York plaintiffs, who had to prove intentional misconduct, Simmonds sought to impose strict liability for profits from groups of underwriters, customers and managers of IPO issuers. Simmonds alleged that the groups had failed to file 10 percent ownership reports and were liable for short-swing profits resulting from stock trades within a six-month period. The court never had to address numerous defenses because of one overarching problem -- there was a two-year statute of limitations period. Simmonds contended that the statute of limitations had not even begun to run, because a one-page form had not yet been filed regarding ownership.

Lane Powell's clients contended that they were never obligated to file such a form, which would have been an anomaly for underwriters. Instead, our clients argued that the statute of limitations was triggered by the massive amounts of pertinent information contained in the New York complaints dating back to 2001, so the limitations period had expired long ago.

For more information, please contact the Securities Law Practice Group at Lane Powell:

206.223.7000 Seattle

503.778.2100 Portland

securities@lanepowell.com

www.lanepowell.com

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