The NCPERS Public Safety Employees Pension & Benefits Conference Presents....

Securities Litigation and Protecting Public Pension Funds’ Interests in Bankruptcy

With:

The Rosen Law Firm
Investor Counsel
Securities Class Actions in General

• What is a securities class action?

• Examples of well-known cases

• Fiduciary duties of pension fund managers in securities class actions

• Which investors can participate?
Securities Class Actions in General

• Different classifications of purchasers:
  - Open Market
  - Private Placement
  - Public Offering

• Differences in advancing the claims of debt vs. equity holders

• Related types of situations: fiduciary duty, self-dealing, dilution, recapitalizations, etc.
Individual Securities Actions

• What is an individual vs. group action?

• Which investors can participate?

• What are the likely outcomes?

• What circumstances would cause you to be in an individual action vs. a class action?
3rd Party Co-defendants

- Auditors and underwriters are often named as co-defendants in complex cases
- They can provide an additional source of settlement funds to compensate for wrongdoing
- Earnings restatements were involved in 22% of settled cases in 2015
- Restatements are associated with higher settlements as a percent of “estimated damages”
Number and Size of Settlements

• Approximately 5% of companies in the S&P 500 are subjects of class action litigation each year
• Total value of settlements approved by the courts in 2015 was $3 Billion; a substantial increase over 2014, but still less than prior years
• This increase was caused by a rise in “mega” settlements (> $100MM)
• Mega settlements - while few, have accounted for more than 50% of settlement dollars in the last decade
Federal Securities Class Action Filings by Year*

*Source: Stanford Law School & Cornerstone Research

On track to increase 24% for the year....

*Source: Stanford Law School & Cornerstone Research
Number of Cases Filed by Industry
2015-16

Utilities
Basic Materials
Energy
Telecom
Consumer Cyclical
Tech
Industrial
Consumer Non- Cyc
Financial
Class Action Settlements

$ value (billions)

Settlement Value $  
- 2006: $20.2  
- 2007: $8.3  
- 2008: $3.0  
- 2009: $4.1  
- 2010: $3.3  
- 2011: $1.4  
- 2012: $3.3  
- 2013: $4.8  
- 2014: $1.0  
- 2015: $3.0B

# of Settlements
- 2006: 90  
- 2007: 109  
- 2008: 97  
- 2009: 99  
- 2010: 85  
- 2011: 65  
- 2012: 56  
- 2013: 66  
- 2014: 63  
- 2015: 80
Settlement Amounts and Public Pensions

- Public Pension Plans tend to be plaintiffs in cases with larger than average damages
- Median settlement achieved by public pension lead plaintiffs tends to be about 3x the settlement in non-pension plaintiff cases

![Chart showing settlement amounts and public pension participation over years 2011 to 2015.]
Securities Claims in Bankruptcy

• The correlation between securities fraud and bankruptcy
  • “Desperation breeds fraud”
• Bankruptcy discharge can sometimes mean a faster, stronger recovery for the company
• Is there any value remaining in the company for debt & equity holders beyond D&O insurance?
• Claims types: fiduciary duty, securities, debt & equity interests
How to Protect Your Claims

• Protecting your common stock claim

• Protecting your bondholder’s claim

• *Always check the box!*

• Reiterate: Class vs. Individual Actions
How to Protect Your Claims

• It’s always best to seek relief from bankruptcy stay and litigate in District Court

• *Act Fast* - if assets remain in the estate, regardless of D&O insurance

• Make sure your counsel *quickly* moves for class certification or seeks relief from the stay
Case Studies

• ShengdaTech Bankruptcy
  • Equity class action in New York/Bondholders in Massachusetts and group action in Nevada
  • If there are no assets, go after insurance, underwriter and auditors

• AgFeed Industries Bankruptcy
  • Delaware company owned hog farms in U.S/China
  • Self dealing in Chinese operations
  • SEC enforcement action
  • Hedge funds bought up equity in bankruptcy
  • A dual settlement was structured with SEC fair fund
Case Studies

• Longwei Petroleum Receivership
  • Involved both a class action and derivative case
  • Ghost company
  • Receivership - can be a powerful tool
  • Press company claims against insurers, malfeasant officers
  • Gather assets/distribute assets to shareholders
“Ranked 2nd in the nation for number of securities class action settlements in 2015 by Institutional Shareholder Services.”