

Commercial Litigation Insider

**ALM Properties, Inc.**

Page printed from: [Commercial Litigation Insider](#)

[Back to Article](#)

Select '**Print**' in your browser menu to print this document.

Print Options: [With Ads](#) | [Without Ads](#)

---

## Plaintiffs Seek Approval of Verizon-Vodafone Class Action Accord

Amaris Elliott-Engel

Commercial Litigation Insider

2014-12-03 00:00:00.0

Shareholders who brought a class action objecting to Verizon Communications' \$130 billion acquisition of Vodafone's 45-percent stake in the American telecom's wireless business have asked for final court approval of their non-monetary settlement.

Plaintiffs law firm Faruqi & Faruqi in New York is seeking \$2 million in attorney fees and expenses, which Verizon is not opposing. However, objectors, including Gerald Walpin, a New York attorney and Verizon shareholder representing himself, say the fees are excessive in light of the return for stockholders in ownership of 2.86 billion shares.

The plaintiffs [said](#) that the Verizon's board of directors breached its fiduciary duty to stockholders by causing the company to pay "an allegedly excessive and dilutive price" to acquire Vodafone subsidiaries as well as the minority interest in Verizon Wireless. The plaintiffs also said the duty of candor was violated because the directors failed to disclose material information from their financial advisors opining that the transaction was fair.

In exchange for settling the suit, the plaintiffs said Verizon agreed to include supplemental disclosures about the transaction ahead of a shareholder vote last January. The plaintiffs also said that Verizon's board of directors agreed to obtain a fairness opinion from an independent financial advisor for "any transaction regarding assets of Verizon Wireless having a book value ... in excess of \$14.4 billion," or approximately 5 percent of the book value of Verizon Wireless. The plaintiffs said a fairness opinion would ensure that the telecom's management would not sell assets too cheaply after paying a premium for them.

Without the settlement, the directors of Verizon, which is a Delaware corporation, have no legal duty to obtain an opinion on the fairness of their corporate transactions, the plaintiffs said.

“Such independent fairness opinions for transactions implicating as little as 5 percent of the company’s assets are neither required by law, nor are they common in the business community,” Nadeem Faruqi and Juan E. Monteverde of Faruqi & Faruqi said in their court papers. “These corporate governance reforms, however, provided Verizon stockholders with a material benefit in the form of providing stockholders with heightened protection from the possibility of management selling assets too cheaply after acquiring them at a premium price.”

The case is pending before Manhattan Commercial Division Justice Melvin L. Schweitzer. Preliminary approval already was granted to the settlement.

In September 2013, Verizon announced its agreement with Vodafone Group Plc and Vodafone 4 Limited to acquire Vodafone’s 45 percent indirect interest in Verizon Wireless. In exchange, Verizon agreed to pay \$59 billion in cash financed by what was among the largest corporate bond issuances in history. Verizon also agreed to pay \$60 billion in Verizon stock, \$5 billion in notes payable to Vodafone 4, a 23.1 percent stake in Vodafone Omnitel N.V. valued at \$3.5 billion and other consideration of \$2.5 billion.

While the transaction involved the purchase of a minority interest in Verizon’s wireless business, it was the third-largest acquisition ever, Faruqi & Faruqi said.

Fewer than 223 stockholders wanted to opt out of the settlement, according to the firm’s court papers.

### **Fee Fight**

Faruqi & Faruqi argues that Delaware law recognizes giving attorney fees to plaintiffs lawyers who “provide a substantial benefit in the form of disclosures or therapeutic measures.” According to the firm, those benefits were the disclosure of additional information about the Verizon-Vodafone transaction ahead of the shareholder vote and requiring Verizon to obtain an independent opinion on the fairness of selling 5 percent or more of their assets over the next three years.

The fee lodestar is \$640,500 multiplied by 2.90. The firm also says it incurred a little more than \$144,000 in fees. Walpin said in his filing that the fees were actually only \$25,299.38.

Walpin said in an email he is objecting to a settlement in which the plaintiffs lawyers would get \$2 million in fees but the plaintiffs would not get any remuneration. There are even costs to shareholders to pay a settlement out of corporate assets, he said.

Avi Szenberg of Szenberg & Okun in New York, writing on behalf of client Jonathan M. Crist, said this case reflects a negative practice by class-action attorneys to file “lawsuits virtually every time a merger or acquisition of a public company is announced, followed shortly thereafter by a non-pecuniary settlement for no meaningful benefit to the shareholders, accompanied by large fee requests by the plaintiff’s lawyers for very little work.”

Szenberg said in an email that the overall deal is not being challenged. Instead, his client is challenging the request for attorney fees because “plaintiff’s counsel achieved no benefit for the shareholders.”

Verizon’s lawyers are Paul K. Rowe and Adam M. Gogolak of Wachtell, Lipton, Rosen & Katz in New York.

The lawyers from Faruqi & Faruqi did not respond to a request for comment. Rowe also did not respond to a request for comment.

Amaris Elliott-Engel can be reached at [aelliott-engel@alm.com](mailto:aelliott-engel@alm.com) and 212-457-9554. Follow CLI on Twitter [@NYComLitInsider](https://twitter.com/NYComLitInsider).

---