

Judge Rejects Verizon's Settlement of Shareholders' Lawsuit

Amaris Elliott-Engel, New York Law Journal

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A Manhattan Commercial Division judge has scuttled a non-monetary settlement of a class action brought by shareholders objecting to Verizon Communications' \$130 billion acquisition of Vodafone's stake in the American telecom's wireless business.

The decision also wipes out \$2 million in attorney fees and costs for plaintiffs' law firm Faruqi & Faruqi.

In a highly critical opinion in [Gordon v. Verizon Communications](#), 653084/2013, Justice Melvin L. Schweitzer ([See Profile](#)) said approving the legal fees would be a misuse of Verizon's corporate assets and would enable "an unwarranted divestiture of shareholder rights."

The case, Schweitzer said, is an example of the rising tide of litigation that comes with every public acquisition in which a settlement benefits the class counsel financially and helps the defense by ending the litigation.

"A body of law meant to protect shareholder interests from the absence of due care by the corporation's managers has been turned on its head to diminish shareholder value by divesting them of valuable rights via the broad releases that plaintiffs have fashioned at the demand of concerned defendants and their counsel and imposing additional gratuitous costs" in the form of attorney fees, the judge said.

Avi Szenberg, co-founder of Szenberg & Okun in New York who represented objector Jonathan M. Crist, said that while his client only objected to paying \$2 million in legal fees, he thought the entire lawsuit was frivolous and a waste of shareholders' resources.

"Lawyers should not be compensated for these type of actions and obtaining these useless settlements," Szenberg said.

Even though the Delaware courts are the center of shareholder litigation in the United States and have a reputation of being tough toward shareholder lawsuits, Szenberg said Schweitzer's decision shows that a New York judge can be as skeptical as any Delaware judge. His co-counsel included firm co-founder Jacob Okun and of counsel Moshe Balsam.

The plaintiffs said 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 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. A fairness opinion would ensure that the telecom's management would not sell assets too cheaply after paying a premium for them, the plaintiffs said.

Schweitzer said that judges view fairness opinions favorably when evaluating the actions of directors, but the decision to obtain those opinions is up to the business judgment of directors. Moreover, mandating a fairness opinion for any transaction involving 5 percent of Verizon Wireless' book value "may actually operate to curtail the company's directors' flexibility and ability to employ their collective business experience in connection with minimal ... asset dispositions," the judge said.

Schweitzer said that the supplemental disclosures negotiated by the plaintiffs would not increase shareholder value. The disclosures included details of financial advisor JPMorgan's comparative analysis of other companies in the industry, the absence of which the judge called "a degree of administrative mercy on analysts and shareholders who comb disclosure documents for items of merit."

Sean Griffith, a law professor at Fordham University School of Law, was the expert for objector Crist and spoke at the hearing, along with counsel.

Gerald Walpin, a New York attorney and Verizon shareholder representing himself, also argued the fees were excessive in light of the return for stockholders in ownership of 2.86 billion shares.

"This decision proves that shareholders do not have to accept a settlement of a case, supposedly brought in their name by a lawyer, where the shareholders receive nothing and the lawyer sweeps in millions for himself," Walpin said in an email.

Managing partner Nadeem Faruqi and partner Juan E. Monteverde of Faruqi & Faruqi did not respond to a request for comment.

Verizon's lawyers are partner Paul K. Rowe and associate Adam M. Gogolak of Wachtell, Lipton, Rosen & Katz in New York. Rowe declined to comment on the ruling.

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.

@Amaris Elliott-Engel is senior editor of Law Journal affiliate CLI. She can be reached [via email](#). Follow CLI on Twitter: [@NYComLitInsider](#).