

4th Circ. Won't Revive DXC Technology Investors' \$2B Suit

By **Katryna Perera**

Law360 (December 1, 2021, 8:54 PM EST) -- A Fourth Circuit panel in a published opinion on Wednesday affirmed a lower court's decision to toss a \$2 billion securities suit that accused DXC Technology Company and its top brass of making misleading statements about revenues.

The panel agreed with the district court's finding that the plaintiffs failed to allege that DXC, its former CEO Mike Lawrie and its former Chief Financial Officer Paul Saleh made actionable false and misleading statements. The panel also agreed with the lower court that the facts included in the complaint were not strong enough to allege that the defendants acted with scienter.

Judge James Andrew Wynn wrote the opinion with Judges Stephanie D. Thacker and Allison Jones Rushing joining.

"The district court determined that the statements issued by DXC or made by its employees were either forward-looking statements ... or non-actionable puffery," the opinion states. "Further, the district court concluded that the plaintiffs' complaint, viewed as a whole, did not contain factual allegations sufficient to give rise to the 'strong inference' of scienter."

According to the opinion, the plaintiffs relied on five categories of allegations to demonstrate scienter, including claims made by a former executive of DXC, statements of unnamed former DXC employees and massive stock sales by two defendants during the class period, among others.

But the panel concluded that none of the categories individually "gave rise to an inference of scienter that is as compelling as a non-fraudulent inference," the opinion states.

Looking at the investor's complaint holistically, the judges still concluded that the allegations cannot establish scienter, according to the opinion.

"Holistically analyzing plaintiffs' allegations as to scienter, the non-fraudulent inference—that DXC unexpectedly stumbled, leading to reduced revenue and other greater-than-expected operational difficulties—is more compelling than the requisite inference that defendants knowingly or recklessly misled investors about the company's financial health," the opinion states.

The panel also noted that the plaintiff's own allegations explain why DXC did not hit its stated business goals.

DXC told investors why it "stumbled," the judges said. The plaintiffs stated in their complaint that DXC experienced "a stronger dollar, completion of several large transformation projects, and slower ramp-up on a few large digital contracts," as well as a decline in its application and maintenance business.

"While Plaintiffs argue that these roadblocks were the inevitable result of defendants' business cuts and should have been more thoroughly disclosed, the existence of a plausible—and largely uncontested—innocent narrative explaining DXC's struggles further convinces us that plaintiffs have failed to adequately plead scienter," Judge Wynn said.

The judges also stated that they have found "on multiple prior occasions" that when risks and weaknesses are disclosed to investors, it "counts against" an inference of scienter.

"Further, while Defendants announced a downward revision in revenue projections, they also announced an increase in earnings per share," the opinion states. "This undercuts plaintiffs' arguments that the company financials soured overnight and were entirely unfavorable to investors, and that the defendants engaged in the fraudulent misdirection of investors by withholding information."

DXC investors had asked the Fourth Circuit to revive the case in September 2020.

The investors, led by KBC Asset Management NV, Arbejdsmarkedets Tillægspension and the City of Warren Police and Fire Retirement System, claimed that the Virginia-based IT company and its executives made nearly 40 public false and misleading statements about its revenues and business plans after it was created in April 2017 through the merger of Computer Sciences Corp. and the Enterprise Services business of Hewlett Packard Enterprise Co.

They claimed DXC and its executives touted positive revenue projections and an optimistic outlook, even though they allegedly knew that their cost-cutting had adversely impacted the company's ability to achieve key revenue targets.

When news revealed revenue shortfalls and layoffs, the prior misstatements allegedly caused two single-day stock drops of 16% and 12% in October and November 2018, respectively, the suit said.

In May 2019, the company filed a motion to dismiss the lawsuit for good, arguing that the allegations were insufficient and failed to state a claim. U.S. District Judge Anthony J. Trenga sided with the company in June 2020, finding that the investors failed to adequately plead a single material misstatement or omission and that the allegations failed to establish intent to defraud.

Judges James Andrew Wynn, Stephanie D. Thacker and Allison Jones Rushing sat on the panel for the Fourth Circuit.

Representatives for the parties did not immediately respond to requests for comment on Wednesday.

The investors are represented by Nathan David Finch of Motley Rice LLC, Steven Jeffrey Toll of Cohen Milstein Sellers & Toll PLLC, Steven T. Webster of Webster Book LLP and Craig Crandall Reilly of the Law Office of Craig C. Reilly.

DXC is represented by Jamie Wine, Kevin McDonough, Stephen Barry, Melissa Arbus Sherry and Margaret Upshaw of Latham & Watkins LLP.

The case is KBC Asset Management NV v. DXC Technology Company, case number 20-1718, in the U.S. Court of Appeals for the Fourth Circuit.

--Additional reporting by Dean Seal and Dorothy Atkins. Editing by Ellen Johnson.

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