

## DXC Gets Another Merger Stock-Drop Suit Tossed, For Now

By Craig Clough

*Law360 (July 28, 2020, 10:30 PM EDT)* -- A California federal judge tossed a proposed class action accusing DXC Technology Co. and Hewlett Packard Enterprise executives of making false statements ahead of the merger which created DXC, finding allegations of an undisclosed cost-cutting target as an insufficient basis for securities violations.

U.S. District Judge Beth Labson Freeman pointed to a recent ruling by U.S. District Judge Anthony J. Trenga of the Eastern District of Virginia, who dismissed a companion suit in June that made similar allegations.

The Virginia court found the existence of an internal \$2.7 billion cost-cutting target, even if true, would not prove there were any knowingly false or misleading statements given to investors. On Monday, Judge Freeman said she reached a similar conclusion.

"Importantly, there are no allegations in the complaint that DXC actually achieved this alleged internal target or cut costs in excess of the disclosed \$1 billion," Judge Freeman wrote while granting DXC and HPE's motion to dismiss but leaving the plaintiffs an opportunity to amend the complaint.

"But the complaint does not allege that DXC cut any more cost than it said it would in the first year after the merger — the only year that is relevant because the challenged statements only cover the first after the merger was completed," the judge added.

The investors claim that Virginia-based information technology company DXC, HPE and their executives made false and misleading public statements in a registration statement with the U.S. Securities and Exchange Commission ahead of DXC trading on the New York Stock Exchange in April 2017.

They allege that the companies and their executives did not properly disclose the existence of the \$2.7 billion cost-cutting plan, but instead publicly touted a \$1 billion plan.

DXC was created in 2017 through the merger of Computer Sciences Corp. and the Enterprise Services business of Hewlett Packard Enterprise Co.

DXC stock declined from a price of \$59 at the time of the merger to \$32.70 per share, or a nearly 45% decline, by September 2017, according to the complaint. The investors blame the \$2.7 billion cost-cutting plan, which they say led to revenue shortfalls and layoffs.

According to the complaint, the company did not disclose that "the cuts to DXC's workforce would be too large, too soon, resulting in client dissatisfaction and the departure of key employees, which, consequently, would materially harm DXC's ability to secure and generate revenue on new or renewed contracts."

The proposed class involved hundreds or thousands of members and millions of DXC shares that were traded on the allegedly false information, according to the complaint, which seeks unspecified damages.

The existence of the "workforce optimization" plan was outlined in an unrelated employment suit filed by a former DXC executive, Stephen J. Hilton, and formed a partial basis for the California suit.

Judge Freeman ruled that the plaintiffs had sufficiently pled there was an internal goal at DXC to cut \$2.7 in costs at the time the registration statement was issued, but "failed to sufficiently allege that this goal was anything more than an aspirational internal target or that it was actually achieved (or was even meant to be achieved). Thus, the allegations from the Hilton complaint — even if accepted as true at this juncture — cannot support plaintiffs' claim for violations of securities laws."

Judge Freeman quoted Judge Trenga's ruling and said the Virginia federal judge also found that Hilton's allegations described the \$2.7 billion plan as part of "rather more extensive aspirational goals, not achieved, reflected in an internal budget."

Judge Freeman also ruled among other things that alleged misstatements by DXC were nonactionable puffery and that the cautionary language in the registration statement sufficiently warned investors of the risks at issue in this case.

Counsel for the plaintiffs did not immediately respond to a request for comment.

"In the last two months, two federal judges on opposite sides of the country have rejected attempts by plaintiffs to convert DXC's good-faith projections into securities law violations," Jamie Wine of Latham & Watkins LLP, who represents DXC, said in a statement. "This latest decision marks another important victory for our client. Judge Freeman reached the right result in dismissing the case against all defendants, and we are pleased that DXC has been vindicated once again."

The investors are represented by Adam Marc Apton of Levi & Korsinsky LLP.

DXC is represented by Jamie L. Wine, Kevin McDonough, Stephen P. Barry, and Nada L. Boutros of Latham & Watkins LLP

HPE is represented by Steven M. Schatz, Douglas W. McManaway and Katherine L. Henderson of Wilson Sonsini Goodrich & Rosati PC and Joseph Edward Floren, Karen Pieslak Pohlmann, Marc J. Sonnenfeld and Laura Hughes McNally of Morgan Lewis & Bockius LLP.

The case is Costanzo et al. v. DXC Technology Co. et al., case number 5:19-cv-0579, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins. Editing by Jay Jackson Jr.