

Molina Escapes Investor's Suit Over Growth Misstatements

By **Rachel Graf**

Law360 (December 14, 2018, 8:35 PM EST) -- A California federal court on Thursday dismissed an investor's proposed class action alleging shares of Molina Healthcare Inc. declined when it became apparent the health insurer wouldn't achieve the growth executives had touted, saying the executives' statements were forward-looking and inactionable.

U.S. District Judge Manuel L. Real said named plaintiff Steamfitters Local 449 Pension Plan's complaint targeted inactionable forward-looking statements about Molina's ability to scale or handle a greater amount of work. These statements were paired with warnings about potential risks from entering the Affordable Care Act Health Exchange market and others, which executives had said would fuel revenue growth, according to the order.

"Defendants' statements concerning the scalability of the company's infrastructure are not statements of past or present fact, but are instead forward looking because scalability refers to a system's capacity to handle a growing amount of work, as stated in the [first amended complaint]," the order said.

Steamfitters brought the suit in April, alleging Molina indicated that growth in existing and new marketplaces including the ACA Health Exchange would increase revenue. In reality, Molina's administrative infrastructure, including its personnel and technology, was incapable of supporting such growth, despite executives' assurances otherwise, the complaint said.

When problems with Molina's growth strategy became apparent in 2016 financial disclosures, shares declined, Steamfitters alleged. The stock fell again in 2017 after Molina's CEO said the company wouldn't be able to participate in the ACA Health Exchange.

But the court said Thursday the contested statements are all forward-looking and inactionable under the Private Securities Litigation Reform Act of 1995. They also included "cautionary language" about the risks associated with Molina's move into the "unknown realm of the ACA," the court said.

Even if the statements weren't inactionable, Steamfitters hadn't alleged intent or knowledge of wrongdoing, the court said.

Counsel for the parties didn't respond Friday to requests for comment.

Steamfitters is represented by Robert V. Prongay and Lesley F. Portnoy of Glancy Prongay & Murray

LLP and Jonathan Gardner, Michael P. Canty, Christine M. Fox and Theodore J. Hawkins of Labaton Sucharow LLP.

Molina is represented by Robert Perrin, Manuel Abascal and James Rotstein of Latham & Watkins LLP and John C. Dwyer and Shannon M. Eagan of Cooley LLP.

The case is Steamfitters Local 449 Pension Plan v. Molina Healthcare Inc. et al., case number 2:18-cv-03579, in the U.S. District Court for the Central District of California.

--Editing by Alyssa Miller.