

Daily Journal

February 12, 2014

TOP VERDICTS OF 2013

TOP DEFENSE RESULTS

Mallen v. Alphatec Holdings Inc. et al.

Defense attorneys from three firms secured a complete dismissal of all claims against spinal implant manufacturer Alphatec Holdings Inc., several executives and underwriting firms who were sued by investors accusing the company of misrepresenting the benefits of an acquisition.

The case, which was initially dismissed with leave to amend in March 2012 by U.S. District Court Judge Roger T. Benitez, was dismissed again with prejudice a year later. Plaintiffs in the case have appealed the ruling to the 9th U.S. Circuit Court of Appeals.

The case hinged on two securities statutes, according to the head of the defense team, Peter Wald of Latham & Watkins LLP. Both dealt with alleged fraud committed on investors, in this case, during the purchase of French medical device manufacturer Scient'x S.A.S. because of the failure to disclose alleged inventory problems.

Wald said the plaintiffs failed to provide enough evidence upfront that any such fraud had occurred, a tactic that congressional action had rendered impermissible in the mid 1990s. *Mallen v. Alphatec Holdings, Inc. et al*, 10CV1673 (S.D. Cal., filed Aug. 10, 2010).

"It used to be you could file a case and then find facts afterwards," Wald said.

case INFO

Securities class action

Southern District of California

U.S. District Judge Roger T. Benitez

Defense attorneys: Latham & Watkins LLP, Peter A. Wald, Colleen C. Smith, Michele D. Johnson; Wilson Sonsini Goodrich & Rosati PC, Nina F. Locker, Steven Guggenheim, Jessica L. Snorgrass, Joni L. Ostler; Wilmer Cutler Pickering Hale and Dorr LLP, Randall R. Lee, John F. Batter III, John J. Butts, Nolan J. Mitchell

Plaintiffs' attorneys: Glancy Binkow & Goldberg, Lionel Z. Glancy; Cohen Milstein Sellers & Toll PLLC, Julie G. Reiser, Steven J. Toll; Law Office of David N. Lake APC, David N. Lake



PETER A. WALD

"But Congress stopped that with the Tort Reform Act of 1995."

John F. Batter III, a partner at Wilmer Cutler Pickering Hale and Dorr LLP in Boston who represented the underwriters in the case, said the lawsuit had no merit.

"We believe there is no case and that there never was a case," he said.

While briefing has begun on the appeal, no hearing date for arguments has been scheduled.

Plaintiffs' attorneys did not immediately respond to request for comment.

— Henry Meier