

Prison Co. Stock's Non-Reaction To Disclosures Dooms Cert.

By Rachel Graf

Law360 (January 18, 2019, 10:29 PM EST) -- A Tennessee federal judge declined Friday to certify a class of investors who allege that private prison operator CoreCivic Inc. misrepresented its safety, security and rehabilitation standards, saying shares of the company didn't decline when the supposed misstatements were first revealed.

U.S. District Judge Aleta A. Trauger said shares of CoreCivic didn't decline until then-Deputy Attorney General Sally Yates announced on Aug. 18, 2016, that the government would scale back its use of private contractors, even though the U.S. Department of Justice's Office of Inspector General had already made the company's misstatements clear a week previously.

"An investor who read the [OIG] Report on the day of its publication, August 11, 2016, would have been well-apprised of the fact that there was evidence of significant quality issues with the [Federal Bureau of Prisons]'s contract prisons, including, specifically, CoreCivic's," the order said. "CoreCivic's stock price, however, did not go down — with one obvious potential explanation being that investors simply were not surprised by the information and did not consider the OIG Report to do anything other than confirm their prior assumptions about the quality of CoreCivic facilities."

Lead plaintiff Amalgamated Bank **filed** the proposed class action in August 2016, alleging that between Feb. 27, 2012, and Aug. 17, 2016, CoreCivic concealed inadequate safety and security standards and failed to provide rehabilitative services on par with those offered at federal prisons. These alleged misrepresentations made it unlikely that the Justice Department would renew or extend its contracts with the company, Amalgamated Bank claimed.

Amalgamated Bank sought to represent a class of investors who purchased shares of the company during that period.

But the court said Friday the proposed class can't establish reliance through the so-called fraud-on-the-market theory laid out in the Supreme Court's 1988 *Basic v. Levinson* decision. The presumption of reliance under *Basic* assumes stock prices reflect all publicly available information, and investors, therefore, need not prove reliance on an alleged misstatement.

If, however, defendants can demonstrate the alleged wrongdoing didn't affect share price, they can refute this theory of reliance, the U.S. Supreme Court ruled in *Halliburton II* in 2014.

In this case, Amalgamated Bank hasn't demonstrated that Yates' report, which preceded the stock drop, revealed any "concealed truth" that the OIG report hadn't already disclosed, the court said.

The court rejected a separate theory of reliance as well, since that theory hinged upon omissions and the crux of Amalgamated Bank's complaint relies upon affirmative statements instead, according to the order.

"The court stresses that this ruling is not, in any way, based on a determination that CoreCivic and its executives were forthright in their statements about the quality of their facilities," the court said. "Nor should the court's ruling be read to rule out the possibility that members of the public, including shareholders, may have been misled by the defendants and harmed as a result."

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

The investors are represented by Christopher M. Wood, Dennis J. Herman, Willow E. Radcliffe and Kenneth J. Black of Robbins Geller Rudman & Dowd LLP and Jerry E. Martin of Barrett Johnston Martin & Garrison LLC.

CoreCivic and its executives are represented by Steven A. Riley and Milton S. McGee III of Riley Warnock & Jacobson PLC and David J. Schindler, Brian T. Glennon and Faraz Mohammadi of Latham & Watkins LLP.

The case is Grae v. Corrections Corp. of America, et al., case number 3:16-cv-02267, in the U.S. District Court for the Middle District of Tennessee.

--Editing by Peter Rozovsky.