

Wal-Mart, Mexican Unit Get Shareholder Bribery Suit Tossed

By Jack Newsham

Law360, New York (February 27, 2017, 3:33 PM EST) -- Wal-Mart Stores Inc. beat back a lawsuit from shareholders who accused the retail giant of breaking securities laws by turning a blind eye to bribery and corruption at its Mexican subsidiary, with a New York federal judge concluding Monday that the allegations came too late or failed to show deceptive intent.

Wal-Mart de Mexico SAB de CV and its executive Ernesto Vega were hit with a putative class action in 2013 by shareholder Michael Fogel, one of several lawsuits that followed a 2012 report in the New York Times that said the store's rapid growth in Mexico was fueled by bribes that were largely ignored by officials at the U.S. parent company. Wal-Mart Stores and another executive, Scot Rank, were added to the lawsuit later.



Wal-Mart and its Mexican subsidiary on Monday escaped a putative class action first filed in 2013 over bribery and corruption claims. (AP)

Fogel claimed that the Mexican unit, known as Wal-Mex, misled shareholders in its annual reports between 2004 and 2011 and press releases and committee reports published in 2012, causing its stock to drop when the bribes scandal was revealed. The amended suit also accused Wal-Mart of issuing a misleading quarterly report in late 2011, but U.S. District Judge Katherine Polk Failla said Monday the claims against Wal-Mart and Rank were added to the suit more than two years after the bribery was revealed and said more changes would be futile.

"Many of plaintiff's claims are time-barred, which deficiencies further amendment could not remedy," she wrote. "Plaintiff has had two prior opportunities to amend his complaint, after having been advised of its deficiencies by defendants in two different motions to dismiss. Plaintiff has therefore been afforded a more-than-ample opportunity to allege his claims."

The claims against Wal-Mex and Vega were dismantled in a more piecemeal fashion. The ones that stemmed from Wal-Mex's annual reports from more than five years before the suit were blocked by the statute of repose in the Sarbanes-Oxley Act, the decision said, and claims linked to the press releases

and committee reports that were first mentioned in amended complaints didn't "relate back" to the first complaint and were also time-barred.

Judge Failla also concluded that Fogel hadn't shown scienter, or deceptive intent, on the part of Wal-Mex or either of the executives. The court said the complaint rested on the idea that Vega's title meant he would be aware of corruption, without actually pleading as much. She also said supposedly deceptive language highlighted in the complaint was mere puffery that investors should have seen through.

The Fogel case is at least the second shareholder suit over the Mexican bribes scandal to be tossed, after a derivative case was thrown out in Arkansas in 2015. Another suit is ongoing in Delaware Chancery Court.

Two lawyers for the plaintiffs didn't immediately respond to requests for comment. A Wal-Mart spokesman said the company was pleased with the decision.

The Wal-Mart parties are represented by Peter A. Wald, Brian T. Glennon and Sarah A. Greenfield of Latham & Watkins LLP.

The plaintiffs are represented by Thomas J. McKenna and Gregory M. Egleston of Gainey McKenna & Egleston and Ronald J. Mann of Columbia Law School.

The case is Fogel et al. v. Vega et al., case number 1:13-cv-02282 in U.S. District Court for the Southern District of New York.

--Editing by Emily Kokoll.