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Free Speech, Due Process and Trial by Jury

Bracewell & Pier 1 Team Up for Major Securities Class Action Win

By Mark Curriden

(Jan. 23) – The Municipal Employees’ Retirement System of Michigan (MERS) and the Alaska Electric Pension Fund sued Fort Worth-based Pier 1 and two of its executives in 2015 claiming that they made false statements and misled shareholders about excessive inventory levels, which then led to millions of dollars in financial losses.

The 100-page lawsuit filed in the U.S. District Court in the Northern District of Texas cited dozens of former Pier 1 employees, provided photos of warehouses and even photos of an internal meeting that plaintiffs’ lawyers claimed was evidence that the company and its top officials had violated the U.S. Securities Exchange Act of 1934.

The complaint attracted the attention of several media outlets, including daily newspapers and various business and trade publications, which published articles about the allegations.

Pier 1 General Counsel Mike Carter hired Bracewell to defend the company and its then-chief executive officer, Alex Smith, and then-chief financial officer, Cary Turner.

Bracewell litigation partners Stephen Crain and Bradley Benoit led a team from the firm’s Dallas and Houston offices.

On June 25, 2018, Pier 1 and the Bracewell team scored a huge victory when U.S. District Judge Karen Gren Scholer dismissed the case with prejudice.

“We were pleased with how quickly the court got to the case, got to the oral argument and ruled expeditiously,” Bracewell partner Stephen Crain told *The Texas Lawbook* in an interview. “It was obvious that it was a case [Judge Scholer] took very seriously.”

The dismissal of the lawsuit also attracted significant media attention.

The Association of Corporate Counsel’s DFW Chapter and *The Texas Lawbook* are pleased to announce that Pier 1 and Bracewell are finalists for the 2018 Outstanding Corporate Counsel’s Business Litigation of the Year Award.

The finalists will be honored – and the winners announced – at the awards event Thursday, Jan. 24, at the George W. Bush Institute.

“Bracewell overcame several challenges in obtaining two separate dismissals,” Bracewell officials stated in its nominating submission. “Pier 1’s stock significantly declined during the alleged Class Period and MERS did an effective job of canvassing Pier 1’s former employees for material that could be used to paint Pier 1 in a negative light.

“Also, the CFO left Pier 1 prior to the case being brought, and the CEO left Pier 1 during the middle of the case,” Bracewell stated.

The three-year-long litigation in federal court in Dallas against Pier 1 took several twists and turns.

Plaintiffs’ lawyers filed the original lawsuit in October 2015 alleging Pier 1, Smith and Turner concealed from the market that Pier 1 “had acquired excess inventory that far exceeded consumer demand” that put the company at risk of incurring significant expenses.

Exactly a year later, Bracewell lawyers filed a motion to dismiss the case on the grounds that there were no valid allegations of motive, such as insider trading, and because there were not adequate allegations of conscious misbehavior or severe recklessness.

Crain and Bradley Benoit also argued that many of the alleged misstatements identified by the plaintiffs were actually forward-looking statements protected under the Private Securities Litigation Reform Act “or were mere puffery.”

In August 2017, U.S. District Judge Sidney Fitzwater issued a 64-page opinion dismissing the complaint, stating that case seemed to be more a situation of “fraud by hindsight.”

Judge Fitzwater did, however, allow the plaintiffs to file an amended complaint to address his concerns.

“In September 2017, the plaintiff filed an amended complaint comprised of 130 pages,

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relying on 30 confidential witnesses and an expert report, with several new allegations in an attempt to address the deficiencies that the court identified in the first dismissal,” Bracewell states in its submission nominating Carter and Pier 1 for Business Litigation of the Year.

“Among other things, the plaintiff alleged that Pier 1 misstated its financial numbers, that Pier 1’s inventory was inherently subject to markdown risk if it was not quickly sold, and that Pier 1 misrepresented the scalability of its distribution network,” the nomination states.

Crain and Benoit again filed a motion to dismiss on the grounds that “it failed to overcome the deficiencies in the previous complaint and still failed to allege adequately that the defendants made any misleading statements or omissions with the intent to deceive, manipulate or defraud.”

By the spring 2018, President Trump had nominated – and the U.S. Senate had confirmed – prominent Dallas trial attorney Karen Gren Scholer to the federal bench in the Northern District of Texas. Judge Fitzwater had shifted some of his civil litigation docket to Judge Scholer, including the Pier 1 case.

Judge Scholer reviewed two rounds of voluminous briefing and then conducted a four-hour hearing on the motion to dismiss. In June, she issued a 30-page opinion that left no room for doubt that the plaintiffs failed to prove their case. She ruled that MERS “failed to allege sufficiently that defendants committed securities fraud.”

The plaintiffs have appealed the ruling to the U.S. Court of Appeals for the Fifth Circuit.

In its submission, Bracewell argues that a critical hurdle for Pier 1 in this case was the fact that Judge Scholer had not previously had an opportunity to decide securities fraud cases.

“Part of Bracewell’s task, therefore, was to educate Judge Scholer on the law that would guide her decision, in addition to covering all of the case-specific arguments developed in two rounds of voluminous briefing.

In spite of these obstacles, Bracewell was able to show that the allegations simply did not support a strong inference that Pier 1’s executives were engaged in securities fraud,” Bracewell lawyers stated. “The case was one of the most significant securities cases pending in the last several years.”