

## 5th Circ. Invokes Chanel In Siding With Pier 1 Over Stock Drop

By Rachel Graf

*Law360 (August 20, 2019, 6:12 PM EDT)* -- The Fifth Circuit affirmed the dismissal of a shareholder suit alleging Pier 1 hid the possibility that it might cut prices to sell excess inventory, using a Coco Chanel quote to reject claims executives knew their products were at risk of discounts because they were trendy.

"Fashion changes, but style endures," the fashion designer Coco Chanel once said, the Fifth Circuit noted in its opinion Monday.

"Because we conclude that Pier 1 operates largely in the sturdier business of style and that the investors failed to adequately plead scienter, we affirm [dismissal]," a three-judge panel wrote in the opinion.

Filed in 2015, the proposed class action alleged Pier 1, its former CEO Alexander Smith and former Chief Financial Officer Charles Turner committed securities fraud by failing to warn investors that an inventory buildup increased the risk of discounting.

Pier 1's business relied on "fashion trends, changing consumer tastes, seasonality, and the need to constantly present new types and colors of products to consumers," making it especially important for the retailer to keep its inventory in check, the proposed class argued.

U.S. District Judge Karen Gren Scholer dismissed the case in June of last year, finding the lead plaintiff, the Municipal Employees' Retirement System of Michigan, hadn't shown the executives knowingly misled investors and calling claims that Pier 1 was a trend-based retailer "conclusory."

The Fifth Circuit agreed Monday.

"The investors' allegations do not create a 'strong inference' that all (or even most) of Pier 1's inventory is so trend driven that it could not be sold without significant markdowns," the judges wrote.

The investors had alleged the executives knowingly committed the violations in an attempt to meet certain financial targets tied to cash bonuses, but the Fifth Circuit noted the men weren't even close to meeting their targets for 2015.

Other allegations related to the executives' knowledge of the misstatements fail, too, because they don't claim the pair knew the excess inventory would lead to discounts, according to the opinion.

"Knowledge of high inventory does not necessarily equate to knowledge of significant markdown risk — an equally plausible inference is that Smith and Turner reasonably believed they could fix the excessive inventory problem without resorting to markdowns," the judges wrote.

Stephen Crain of Bracewell LLP, counsel for Pier 1 and the executives, said they're "thrilled" with the decision.

"[It's] just a really well written, concise opinion, and that's obviously always satisfying, candidly, even when you lose," Crain said.

U.S. Circuit Court Judges Jerry Smith, Jacques Wiener Jr. and Jennifer Walker Elrod sat on the panel for the Fifth Circuit.

Counsel for the Municipal Employees' Retirement System of Michigan declined to comment.

The Municipal Employees' Retirement System of Michigan is represented by Adam Wierzbowski of Bernstein Litowitz Berger & Grossmann LLP.

Pier 1, Smith and Turner are represented by Stephen Crain and Bradley Benoit of Bracewell LLP.

The case is Municipal Employees' Retirement System of Michigan v. Pier 1 Imports Inc. et al., case number 18-10998, in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Jay Jackson Jr.