

Pier 1, Execs Duck Investor Suit Over Inventory Disclosures

By Hayley Fowler

Law360 (June 26, 2018, 4:26 PM EDT) -- An employee retirement plan's attempt to nail Pier 1 Imports Inc. for securities fraud in Texas federal court fell short on Monday when a new judge on the case found old flaws have hindered its headway, saying the retailer likely didn't knowingly mislead investors about bloated inventory and the risk of markdowns.

In dismissing the suit, U.S. District Judge Karen Gren Scholer — who received the case in March — said Pier 1, former CEO Alexander W. Smith and former Chief Financial Officer Charles H. Turner's decision to expand inventory and spend more in doing so could be attributed to improving financials and an initiative integrating online and in-store sales.

"In reality, Pier 1 apparently failed to forecast adequately revenue and expenses. Sales targets may have been too aggressive; the transition to online seemingly was not well executed; unplanned supply chain expenses added up; and inventory levels got 'out of whack,'" Judge Scholer said. "Arguably, this may be a case of poor business judgment on the part of Pier 1, Smith and Turner."

That poor business judgment, however, doesn't support claims for securities fraud, she said.

The trio were hit with a proposed investor class action in 2015 claiming they violated federal securities laws by issuing false or misleading statements pertaining to the retailer's financials, distribution, inventory, markdown risk and mounting costs.

Lead plaintiff Municipal Employees' Retirement System of Michigan said that Pier 1's stock plummeted 65 percent between 2014 and 2015 amid a series of disclosures regarding those issues. Smith and Turner allegedly departed in the aftermath.

U.S. District Judge Sidney A. Fitzwater dismissed the suit in August, characterizing MERS' claims as "fraud by hindsight" that sought to pin blame on executives for events that turned out badly. MERS amended it the following month, and the defendants again sought to toss it.

Judge Scholer — whose appointment by President Donald Trump was confirmed earlier this year — conceded Monday that MERS had made some substantial edits in an attempt to highlight Smith and Turner's potential motive and show scienter.

But she said those amended claims were still unconvincing.

“First, Pier 1’s inventories, costs and sales were reported quarterly and have never been restated,” she said. “Second, there are no particularized allegations to suggest defendants were aware of, but chose to hide, facts fundamentally destructive to the value of Pier 1.”

Judge Scholer also said Smith’s supposed knowledge of a backlog of inventory at one distribution center couldn’t support claims he knew of similar issues at all six centers. And she said his and Turner’s approval of increased expenditures to handle the excess inventory could reasonably be explained by an increase in sales and Pier 1’s online initiative.

She found there was stronger evidence to undercut a finding of scienter, pointing to Pier 1’s repeated disclosures during the proposed class period and its continued purchase of inventory, suggesting executives didn’t believe the products would have to be sold at reduced prices.

In dismissing the suit without leave to amend, Judge Scholer said further iterations would likely be futile given that the complaint has already been amended twice.

Counsel for MERS declined to comment Tuesday, and a representative for Pier 1 did not respond. Counsel for the retailer and its executives deferred a request to the firm’s communications director, who did not comment.

MERS is represented by Adam Wierzbowski of Bernstein Litowitz Berger & Grossmann LLP and David T. Moran of Jackson Walker LLP.

Pier 1, Smith and Turner are represented by Stephen B. Crain, Bradley J. Benoit, Joseph M. Cox, Amy E. Parker and Clark A. Donat of Bracewell LLP.

The suit is Town of Davie Police Pension Plan v. Pier 1 Imports Inc. et al., case number 3:15-cv-03415, in the U.S. District Court for the Northern District of Texas.

--Editing by Alyssa Miller.