

shareholder ratification and, if sought, the specificity of such ratification with respect to actions and conduct of the board. ■

FROM THE COURTS

By Fred Isquith

Order denying defendants' motion for partial summary judgment

By Brian Murray, Murray Frank

I've attached a great order from Judge Ware in the N.D. Cal. He certified a class of purchasers on the NYSE and Frankfurt Exchange in the Infineon case. He rejected defendants argument that purchasers in Germany should be excluded because a class action judgment would not be recognized there (declining to speculate on the matter) and refused to truncate the class the exclude purchasers during the quiet period following the IPO, finding that plaintiffs had shown market efficiency during that time. The order also denies defendants motion for partial summary judgment for lack of standing of foreigners buying on the Frankfurt Exchange, holding that plaintiffs had shown sufficient conduct in the US due to filing SEC documents, giving interviews to CNBC, and disseminating false price information in the US. Co-Lead counsel is my firm and Coughlin Stoia. The order is attached as a PDF file. ■

Federal Judge denies motion to decertify class

Judge denies class of more than 400,000 annuity purchasers and denies summary judgment as to class members' consumer fraud claims.

Jason M. Kueser of The Nygaard Law Firm provides this summary of the recent Order in the Mooney v. Allianz case:

On February 26, 2009, Judge Ann D. Montgomery of the United States District Court for the District of Minnesota denied a Second Motion to Decertify the Class and denied, in part, a Motion for Summary Judgment filed by Allianz Life Insurance Company of North America.

The complaint alleges that Allianz violated the Minnesota Prevention of Consumer Fraud Act (MPCFA) by promoting certain annuities as having an "up front" or "immediate" bonus when, in fact, purchasers were required to hold the annuities in deferral for a minimum of five years and subsequently elect to receive income payments for a period of no less than ten years. Plaintiffs also allege that the bonus is illusory because Allianz applies actuarial pricing mechanisms and manipulates interest rates to effectively recover the amount of the bonus from consumers. The class of more than 400,000 consumers sought damages and equitable relief under the Minnesota common law of unjust enrichment. During discovery, the two class representatives provided deposition testimony that detailed the process by which they purchased their annuities. In addition, Allianz deposed 19 class members it had "cherry-picked" in an attempt to obtain evidence demonstrating predominance of individual issues.

In the Order, Judge Montgomery held that the class representatives' testimony demonstrated "a question of fact as to whether Plaintiffs were misled" by the alleged misrepresentations. The court further emphasized that "evidence in the record supports Plaintiffs' claims that they read the [misrepresentations] and that the alleged misrepresentations . . . caused them to experience damage." Judge Montgomery opined that a jury could conclude that a class member suffered damage whether she surrendered her annuity or held her annuity in deferral. The court also found that the number of class members, as well as the dollar amount of annuities Allianz

sold demonstrated that the class members' claims conferred a public benefit, which is required to bring a private civil action under the MPCFA. Accordingly, Judge Montgomery denied Allianz's Motion for Summary Judgment on the claims under the MPCFA. However, because Plaintiffs' claim under the MPCFA provided an adequate legal remedy, Judge Montgomery granted summary judgment on the unjust enrichment claim.

In denying Allianz's Second Motion to Decertify the Class, Judge Montgomery held that, contrary to Allianz's position, common issues predominate among the class. Allianz's motion relied heavily upon the opinion in In re St. Jude Medical, Inc., 522 F.3d 836 (8th Cir. 2008) ("St. Jude II"), in which the Eighth Circuit held that in claims under the MPCFA, "a defendant has a right to present evidence negating a plaintiff's direct or circumstantial showing of causation and reliance." Because a plaintiff is required to demonstrate a causal nexus between a defendant's misrepresentation and damages to prevail under the MPCFA, Allianz argued that St. Jude II precluded a finding of predominance because it had the "right" to present evidence as to every individual class member's reliance (or lack of reliance) upon the alleged misrepresentations. The court astutely recognized that Allianz's argument suggested "that St. Jude II stands for the proposition that MPCFA cases are never appropriate for class treatment" and that this "interpretation was not the intent of the Eighth Circuit" because such a holding "would eviscerate the most logical vehicle to achieve the purpose of the MPCFA – namely to expose and rectify fraud." The court further held that the preponderance of the evidence demonstrated that the alleged misrepresentations were a cause of Plaintiffs' damages and that there was some reliance on the misrepresentations. Judge Montgomery concluded the Order by identifying six specific issues that distinguished the present

case from St. Jude II. Notably, the court stated that, unlike the facts in St. Jude II, the relative uniformity of factual issues of each class member presented the very "situation the St. Jude II court anticipated as an exception."

The case is Linda Mooney, et al. v. Allianz Life Insurance Company of North America, No. 06-cv-00545 (D. Minn. Feb. 26, 2009). The Plaintiffs are represented the Nygaard Law Firm, Chestnut & Cambronne, Page Perry, LLC, and The Doss Firm. ■

***Boston Scientific investors
achieve class action status
By Carolyn G. Anderson, Zimmerman
Reed, PLLP***

Investors in Boston Scientific Corporation securities were granted class action status in their federal securities fraud lawsuit against the company for allegedly misleading investors and concealing information about the company's flagship coronary stent product, the TAXUS drug-eluting stent.

On March 10, 2009, Judge Douglas Woodlock of the U.S. District Court for the District of Massachusetts issued a memorandum certifying a shareholder class of all persons who purchased or otherwise acquired Boston Scientific equity securities between November 20, 2003 and July 15, 2004 (the "class period"). The court appointed lead plaintiff Mississippi Public Employees' Retirement System as class representative and Zimmerman Reed, PLLP as class counsel.

At the core of the lawsuit are allegations concerning known manufacturing defects with TAXUS. In their lawsuit, the investors allege that Boston Scientific violated the Securities Exchange Act of 1934 by knowingly withholding material information and making misleading statements concerning TAXUS, which artificially inflated the company's stock and ultimately caused