

Wis. Rule Shields Ladish Board From Damages: 7th Circ.

By **Keith Goldberg**

Law360, New York (January 26, 2012, 7:24 PM ET) -- The Seventh Circuit on Thursday refused to revive a putative shareholder class action stemming from Ladish Co. Inc.'s \$778 million sale to Allegheny Technologies Inc., saying Wisconsin's business judgment rule doesn't allow an award of damages to shareholders unless they allege willful or intentional misconduct.

A three-judge panel affirmed a Wisconsin federal judge's March dismissal of the suit brought by Ladish shareholder Irene Dixon. U.S. District Judge Joseph P. Stadtmueller ruled that the decision by the board of the metal components maker was protected by the rule, which demands that courts presume that board members are acting in good faith unless proven otherwise.

In a published opinion, the panel rejected Dixon's argument that the rule doesn't apply to director's disclosures aimed at inducing shareholder approval of a potential merger and therefore, doesn't protect the Ladish board from claims that it misstated or omitted material information in the documents they provided to the company's shareholders when they sought approval for the sale to Allegheny.

"This statute covers 'any duty' that a director owes to the corporation or its investors; it is as applicable to a 'duty of candor' as to the general duty of care," the panel said.

The rule says shareholders can't collect damages unless board members willfully or intentionally violate their duties, which Dixon failed to allege, the panel said.

"They sold their own shares as part of the merger, receiving the same price as outside investors. Their interests thus were aligned with those of all other shareholders," the panel said. "Two of the seven directors had golden parachute arrangements, potentially entitling them to compensation should they be fired by Allegheny after the merger closed, but five did not — and the board approved the merger unanimously, showing that this potential conflict was unimportant."

Furthermore, the board disclosed the potential conflict, meaning the two directors that received golden parachutes didn't engage in a willful failure to deal fairly with the company or its shareholders, the panel said.

"We think the court got it exactly right," Andrew Wronski of Foley & Lardner LLP, who represents the defendants, said Thursday. "The reasoning is perfectly consistent with Wisconsin law."

Ladish and Allegheny first announced their deal in November 2010, and under the terms of the deal Ladish shareholders received \$24 in cash and 0.4556 of a share of Allegheny common stock for each share of the target company's common stock, according to the opinion.

The deal was valued at roughly \$778 million when it was announced, but by its May closing, the transaction was worth approximately \$883 million to Ladish shareholders, according to an appellate brief filed by the defendants.

Dixon's suit alleged the board allowed the company to be sold too cheaply in spite of its improving financial health, and that it failed to properly provide shareholders with information when seeking their approval for the deal.

In dismissing the suit in March, Judge Stadtmueller also ruled that Dixon's claims of breach of fiduciary duty and violation of securities disclosure laws did not have enough specific allegations to pass muster.

Counsel for Dixon did not immediately respond to a request for comment Thursday.

Circuit Judges Frank H. Easterbrook and Richard D. Cudahy and District Judge Tanya Walton Pratt sat on the panel for the Seventh Circuit.

Dixon is represented by Juan Monteverde of Faruqi & Faruqi LLP.

The defendants are represented by Andrew Wronski of Foley & Lardner LLP.

The case is Irene Dixon v. Ladish Co. Inc. et al., case number 11-01976, in the U.S. Court of Appeals for the Seventh Circuit.

--Additional reporting by Megan Stride.

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