Former Autonomy Exec Takes Aim at HP's Derivative Deal

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July 21, 2014
Appears in: The Recorder,law.com

SAN FRANCISCO — The former chief financial officer of Autonomy Inc. is trying to upend a settlement between Hewlett-Packard Co. and the two plaintiffs firms leading securities derivative litigation against the company over its disastrous $11 billion purchase of Autonomy.

Sushovan Hussain, represented by John Keker and a team from Keker & Van Nest, filed a motion to intervene Monday, calling the deal "collusive and unfair." Under the agreement, proposed late last month, HP would pay the plaintiffs firms at least $18 million, plus contingency awards, to go after Hussain and other former Autonomy executives.

"HP insiders pay nothing and are absolved of all wrongdoing, and the respected plaintiffs' lawyers get at least $18 million and as much as $48 million for 'assisting' some other law firm to sue Autonomy's former officers," Keker wrote. "Any normal person would say, 'Are you kidding me?'"

The settlement would release HP officers from claims they hid warning signs the acquisition would end up tanking and costing shareholders. In exchange, plaintiffs attorneys with Cotchett, Pitre & McCarthy and Robbins Geller Rudman & Dowd would team up with HP attorneys to go after former Autonomy executives who they say are really to blame for the drop in HP's stock. Plaintiffs attorneys would work under HP's legal team, led by Wachtell, Lipton, Rosen & Katz partner Marc Wolinsky in New York.

The settlement agreement names Hussain and former Autonomy CEO Michael Lynch as specific targets. In a statement, HP spokesman Howard Clabo called Hussain's opposition to the settlement baseless.

"We look forward to the day when a jury gets to hear the evidence of Mr. Hussain's conduct," he wrote. "We strongly believe that at the end of the process, the jury will conclude that Mr. Hussain engaged in a multibillion dollar fraud."

The idea to unite plaintiffs counsel and HP's legal team against Autonomy came from an independent committee counseled by Washington, D.C.-based securities litigator Ralph Ferrara of Proskauer Rose. Retired U.S. District Chief Judge Vaughn Walker helped negotiate the settlement, which attorneys described as an "unusual resolution" in their motion for preliminary approval.

Keker accuses the plaintiffs' team of selling out shareholders. Up until now, the lawyers raised serious allegations against HP's management and board and pushed back against the company's attempts to shift blame to Autonomy, he wrote.

"Now, suddenly," Keker wrote, "plaintiffs' counsel do a total about-face, buying the very story they rejected last year."

The Keker team, which also includes partners Jan Nielsen Little and Brook Dooley and associate Nicholas Marais, argues HP's board of directors is accountable for the failed merger. HP executives ignored arguments from CFO Catherine Lesjak that the acquisition was a bad idea and undermined the merger after it went through, according to the filing. More than a year later, CEO Meg Whitman "cried fraud" and wrote down the deal by $8.8 billion, according to Keker.

Keker declined to comment. U.S. District Judge Charles Breyer is expected to consider the proposed settlement at a hearing next month.

The motion to intervene also takes issue with language that appears to broadly bar further legal action based on the Autonomy acquisition. That unfairly prohibits Hussain from asserting claims or counterclaims to defend himself against HP, Keker wrote.

"HP seeks to forever bury from disclosure the real reason for its 2012 write-down of Autonomy: HP's own destruction of Autonomy's success after the acquisition," he wrote. "HP seeks to absolve itself of its own responsibility for its losses."

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