

In re Delphi Corporation Securities Litigation

COURT: United States District Court, Eastern District of Michigan
CASE NUMBER: 05-md-1725
JUDGE: Hon. Gerald E. Rosen
CLASS PERIOD: 03/07/2000 - 03/03/2005
CASE CONTACTS: Max W. Berger, Hannah Ross

Securities fraud class action filed on behalf of a class of persons and entities who purchased or acquired the securities of Delphi Corporation ("Delphi") between March 7, 2000 and March 3, 2005 (the "Class Period") and were damaged thereby (the "Class"). BLB&G is Co-Lead Counsel of the Class representing its client the Public Employees' Retirement System of Mississippi ("Mississippi PERS").

BLB&G and Mississippi PERS Obtain \$38.25 Million Recovery from Deloitte & Touche LLP; Combined Recoveries of Up to \$128.35 Million

On December 27, 2007, BLB&G and Mississippi PERS, along with the other institutional plaintiffs leading the investor lawsuit, announced that an agreement in principle had been reached with Delphi's former auditor, Deloitte & Touche LLP ("Deloitte") to settle claims against the auditing firm for \$38.25 million in cash. The settlement was granted final approval on June 26, 2008 and is one of the larger settlements ever paid by an accounting firm in a securities litigation. This recovery, combined with the recovery of \$90.1 million from Delphi's former officers and directors as well as the banks that underwrote Delphi's offerings during the Class Period (discussed below), brings the total recovery to \$128.35 million. In order to participate in the Deloitte settlement, Class Members must have submitted a Proof of Claim form by May 30, 2008.

On February 1, 2008, Lead Plaintiffs voluntarily dismissed the claims against the remaining third parties, namely, JPMorgan Chase & Co. (as successor in interest to Bank One Corporation ("Bank One"), SETECH Inc. ("SETECH"), and BBK, Ltd. ("BBK").

Lead Plaintiffs Obtain a Recovery of Up to \$90.1 Million for the Benefit of the Class

On August 31, 2007, BLB&G and Mississippi PERS, along with the other institutional plaintiffs leading the investor lawsuit, reached a settlement on behalf of the Class with Delphi, certain of Delphi's former officers and directors (the "Individual Defendants"), and the investment banks that underwrote Delphi's offerings during the Class Period (the "Underwriter Defendants"). The settlement provides for a recovery with a potential value of \$284.1 million, composed of numerous payments, including an allowed claim with a potential value of \$179 million that will be paid from Delphi as part of the Company's emergence from bankruptcy; \$78.6 million from the insurance carriers on behalf of the Individual Defendants; \$1.5 million from the Underwriter Defendants; contingent payments of up to \$10 million to be paid by the insurance carriers on behalf of the Individual Defendants; and a \$15 million third party payment. However, due to the minimal payment to unsecured creditors as part of Delphi's emergence from bankruptcy and the severe financial difficulties experienced by the third party, the current value of the settlement is \$90.1 million.

On January 11, 2008 and November 16, 2009, the Court granted final approval of the settlement. In order to participate in the recovery, Class Members must have submitted a Proof of Claim form by January 18, 2008.

Court Grants Plaintiffs Request to Lift the PSLRA Discovery Stay

On February 15, 2007, the Court issued an opinion and order granting Lead Plaintiffs' Motion for Partial Modification of the PSLRA-mandated discovery stay. Lead Plaintiffs are now able to obtain from the named Defendants, as well as third parties General Motors and Electronic Data Systems ("EDS"), those documents that they already produced to various government agencies conducting investigations into the alleged fraud perpetrated at Delphi. Pursuant to this Order, all defendants have started producing documents to Lead Plaintiffs. Additionally, Lead Plaintiffs have received documents from the Debtor that Delphi previously produced in connection with the Company's internal investigation into the alleged fraud.

BLB&G Files Objection on Behalf of Investors to Key Employee Compensation Program in Delphi Scandal

On November 22, 2005, BLB&G, on behalf of Co-Lead Plaintiff the Public Employees' Retirement System of Mississippi and the Class, filed an objection to Delphi's proposed Key Employee Compensation Plan.

Background

On June 27, 2005, the Honorable Naomi Reice Buchwald appointed BLB&G client Mississippi PERS as Co-Lead Plaintiff and BLB&G as Co-Lead Counsel for the Class.

Lead Plaintiffs allege violations of federal securities laws by Delphi Corporation and certain trusts it had established to sell securities; certain of Delphi's former officers and directors; Delphi's outside auditor, Deloitte & Touche LLP; a number of investment banks that underwrote Delphi securities; and certain third parties [SETECH, BBK, and Bank One (since acquired by JPMorgan Chase)] that entered into sham transactions intended to falsely inflate Delphi's reported financial results.

Specifically, Plaintiffs allege that defendants made materially false and misleading statements because, at the time they made these statements, the defendants failed to disclose the following adverse facts that, among others: (1) the Company booked IT service provider and non-IT supplier rebates and credits to income before they were earned; (2) the Company improperly treated payments for IT services as assets instead of as expenses; (3) the Company improperly treated financing transactions involving inventory as sales and disposition of inventory; (4) the Company improperly treated financing transactions involving "indirect materials" as sales of these materials; (5) the Company improperly accounted for payments made to and credits received from General Motors as warranty settlements and obligations; and (6) the Company's financial statements were not prepared in accordance with GAAP. As a result of the Company's alleged accounting violations, the Company's reported revenue, net income and financial results were materially overstated during the Class Period. Indeed, on June 30, 2005, Delphi restated its earnings for the past five years. Delphi's Restatement reduced 2001 retained earnings by \$265 million; reduced 2002 net income by \$24 million; narrowed its 2003 net loss by \$46 million; and widened its 2004 loss to \$4.8 billion from the \$36 million originally reported.

Delphi declared bankruptcy on October 8, 2005. Litigation over the bulk of the Debtors' proposed Key Employee Compensation Plan, an employee retention and bonus plan which Debtors initially submitted for approval in October 2005, has been suspended in Bankruptcy Court. On December 12, 2005, the Judicial Panel on Multidistrict Litigation issued a transfer order consolidating the securities litigation to the Eastern District of Michigan, in front of the Honorable Gerald Rosen. On March 10, 2006, Defendants moved to dismiss the Complaint on a variety of grounds. Lead Plaintiffs' Opposition to Defendants' Motions to Dismiss was filed on May 12, 2006, and defendants filed reply briefs on June 12, 2006. Motions to dismiss are now fully briefed and before the Court. Pursuant to the PSLRA discovery stay provision, formal discovery cannot begin until the defendants' motions to dismiss are resolved. On October 17, 2006, Judge Rosen affirmed the appointment of Mississippi as co-Lead Plaintiff. On October 30, 2006, the Securities and Exchange Commission filed civil fraud claims against Delphi, nine former Delphi executives, including defendants Battenberg, Dawes, Blahnik and Free and four employees of outside firms. The SEC's claims corroborate the legal theories propounded in Lead Plaintiffs' Complaint and provide further details concerning its central factual allegations. In light of the SEC action as well as information uncovered by Lead Plaintiffs' ongoing investigation and other significant

developments, including developments in Bankruptcy Court, On November 28, 2006 Lead Plaintiffs filed a Motion for Leave to Amend the Consolidated Class Action Complaint. On October 26, 2007, Lead Plaintiffs filed their First Amended Complaint, asserting additional allegations against Deloitte and the three scheme liability defendants, JPMorgan, BBK and SETECH.