

COMPLAINT URGES SEC & DOJ INVESTIGATION OF SHORT-SELLING IN CLASS ACTION

by
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As part of its Investor Protection Program, Washington Legal Foundation (WLF) filed a complaint recently with the U.S. Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) requesting the federal agencies to investigate whether any federal civil or criminal laws were violated with respect to short-selling of the stock of Terayon Communication Systems, Inc. (Terayon), and related conduct in a class action securities fraud lawsuit against the company filed by Milberg Weiss Bershad Hynes & Lerach.

WLF's complaint centers around a class action lawsuit (*In re Terayon Communication Systems, Inc. Securities Litigation*) pending in federal court in San Francisco before U.S. District Court Judge Marilyn Hall Patel. Judge Patel has raised troubling questions about the genesis of the case and the role of two of the lead plaintiffs who had sold short 400,000 shares of Terayon from August 3, 1999 to early 2000.

At the hearing to disqualify the lead plaintiffs, Judge Patel was clearly troubled by the arrangement: "[It] disturbs me the people who are going to drive the litigation are in fact people who are betting on the stock going down * * *. The problem I have is that it raises questions about what was going on here. What did Milberg Weiss know before the complaint was filed * * *. I think it's utterly amazing we have this lengthy complaint and with all of the excruciating details and the stock just drops the day before [the suit is filed]." The evidence in the case suggested that lead plaintiff Cardinal Partners and its employees had instituted what they called their "Game Plan," a systematic and coordinated effort over a six-month period to drive the value of the stock down.

The SEC Enforcement Division has indicated that due to limited resources, it is more likely to investigate complaints that have generated more public interest and support. Consequently, counsel are urged to contact the SEC Enforcement Division at 450 Fifth Street, N.W., Washington, D.C. 20549, and request that the SEC investigate WLF's complaint. Counsel are also urged to contact WLF if they are aware of similar cases of possible market manipulation.

Paul D. Kamenar is Senior Executive Counsel of the Washington Legal Foundation. WLF's complaint to the SEC can be viewed on WLF's web site, www.wlf.org.

About WLF And The COUNSEL'S ADVISORY

The Washington Legal Foundation (WLF) is the nation's largest non-profit, free enterprise public interest law and policy center. WLF litigates *and* publishes in order to advocate legal policies that promote economic growth, job creation, and the civil liberties of business. As a 501(c)(3) tax exempt organization, WLF relies upon the charitable support of individuals, businesses, associations, and foundations to fund its programs.

This COUNSEL'S ADVISORY is one of WLF's six publication formats. Its purpose is to inform the free enterprise community about a development in the legal policy world that can be favorably influenced by the immediate involvement of legal experts and business and community leaders.

For more information on the Washington Legal Foundation, please contact Daniel J. Popeo, Chairman, at (202) 588-0302.

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