

**August 31, 2005**

## **SEC INVESTIGATES WLF COMPLAINT AGAINST MILBERG WEISS AND SHORT SELLERS IN CLASS ACTION**

*(In re: Terayon Communications Litigation)*

During a recent federal court hearing in San Francisco, an attorney for Lerach, Coughlin, Stoia & Robbins, LLP (the renamed San Diego firm formed last year by noted class action attorney William Lerach after his breakup with Milberg Weiss in New York) revealed that the Securities and Exchange Commission (SEC) has been investigating a securities class action case it filed against Terayon Communications Systems in 2000 on behalf of short sellers of Terayon stock. This is the first public confirmation that the SEC has acted on WLF's complaint filed with the SEC in late 2003 as part of WLF's INVESTOR PROTECTION PROGRAM requesting an investigation into whether any federal civil or criminal laws were violated with respect to short selling of Terayon stock and related conduct in the lawsuit. WLF also has a Freedom of Information Act (FOIA) lawsuit against the SEC pending in federal court in Washington, D.C., seeking the release of all agency records relating to WLF's complaint regarding Terayon and other cases involving questionable conduct between class action attorneys and short sellers.

The revelation of the SEC investigation came during a hearing on August 12, 2005 before U.S. District Judge Marilyn Hall Patel who has been presiding over the case during the last four years. Last year, she disqualified two lead plaintiffs after learning that they were short sellers, and allowed Terayon's counsel to continue to conduct discovery of then-Milberg Weiss and its clients regarding the genesis of their relationship and the filing of the securities class action case. Some documents were later produced and some were submitted only to the court on privilege grounds, which was one of the issues discussed at the August 12 hearing.

During the hearing, the attorney for Lerach Coughlin complained to the court that Terayon's attorneys should not be investigating the law firm and its clients because "the SEC opened an investigation about a year ago" and has "taken depositions." In response to Judge Patel's question as to whether the investigation is still outstanding, the attorney responded that the "SEC doesn't tell you when they're finished with their work," but that the court should "let the agency that is investigating investigate" rather than allow Terayon's attorneys to continue with their discovery. Judge Patel rebuffed their plea and allowed defense attorneys to continue with depositions of certain individuals in September and, if needed, to file papers in October to take depositions of the plaintiffs' attorneys.

"WLF is certainly pleased to learn that the SEC, at last, has apparently acted on our complaint to investigate Milberg Weiss and its short seller clients in the *Terayon* case," said Paul Kamenar, WLF's Senior Executive Counsel. "We will soon learn through our FOIA

lawsuit the status of that investigation and others requested by WLF over the last two years," Kamenar added. The SEC is required to respond by the end of September to WLF's records request.

WLF's Terayon complaint with the SEC was prompted by a news article in the *San Francisco Chronicle*, "Double-Whammy in Stock Fraud Suit: Short sellers trash, then sue, Santa Clara tech firm," (Nov. 9, 2003). A securities fraud lawsuit was filed against Terayon on April 13, 2000, the day after the stock (and most of the tech market) dropped in value. A subsequent motion was filed by Milberg Weiss to have five persons named as lead plaintiffs in the case, two of whom included Cardinal Partners, a hedge fund managed by general partner Cardinal Investment Company of Dallas, Texas, and a Cardinal employee. After the motion was granted and Milberg Weiss was appointed lead counsel, the complaint was amended. It was discovered later that Cardinal had previously sold short 400,000 shares of Terayon from August 3, 1999 to early 2000, exposing it to losses of \$80 million if the stock price did not drop. Evidence subsequently obtained in the case during discovery suggests that another Cardinal employee had instituted what he described as a "Game Plan," a systematic and coordinated effort beginning in January 2000 to disseminate negative information about the company to drive the value of the stock down, and thus, to make a profit. Both class counsel and the short sellers deny any wrongdoing and claim the negative information about Terayon was true.

In these kinds of securities class actions, the typical complaint is that shareholders were injured by the sudden drop in the value of the stock once negative inside information was released to the public that should have been released earlier. Here, however, Cardinal stood to gain if the stock price fell and claimed that it knew all along the allegedly negative inside information about the company. The initial question was whether there was a conflict of interest between the interests of short-sellers who profit if the stock goes down, and the typical class member who purchased the stock for a long-term investment hoping the stock would rise. Judge Patel was clearly troubled by the arrangement and what she characterized as a "lack of candor" by Milberg Weiss and their clients for failing to disclose the short sales made during the revised class period. In her February 2004 ruling, Judge Patel disqualified the two short sellers as lead plaintiffs. The upcoming depositions may result in a motion by Terayon to disqualify Lerach Coughlin as class counsel.

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For further information, contact WLF Senior Executive Counsel Paul Kamenar, at 202-588-0302. Information regarding WLF's INVESTOR PROTECTION PROGRAM and the transcript of the August 12, 2005 hearing in *Terayon* are posted on WLF's website, [www.wlf.org](http://www.wlf.org). In addition, the August 25, 2005 Web Seminar hosted by WLF which discusses the recent criminal indictment involving alleged kickbacks by Milberg Weiss to its client Seymour Lazar in many class action cases and developments in the *Terayon* case is archived for viewing on WLF's website.