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11th Circ. Affirms Ex-Stiefel Worker's $1.5M Award

By **Kat Greene**

Law360, Los Angeles (June 30, 2014, 8:46 PM ET) -- The Eleventh Circuit refused Monday to overturn a $1.5 million victory for a former Stiefel Laboratories Inc. sales representative, ruling that a jury wasn't wrong in finding that the company misled the former employee into selling his shares at an artificially low price just before a merger.

A three-judge panel ruled that Stiefel had made the fact that it was a family-owned company, and that it wasn't considering any future transactions, such an important part of its identity that it should have disclosed to employees and shareholders when it entered talks to merge with GlaxoSmithKline PLC.

Siding with former sales representatives Tim Finnerty, the panel said it was unpersuaded by Stiefel's argument that it had no duty to disclose that it was in talks to merge with GSK or any competing bidders because the "family business" idea had been hammered home at every employee meeting.

"This context is significant," the panel said. "The jury could have reasonably concluded that the investors who were also [Stiefel] employees attached a special significance to the statements that [Stiefel] 'will continue to be privately held' because the statements were reinforced by the company's history and longstanding philosophy."

Finnerty won his case in federal court against the pharmaceutical giant, which he says tricked him into selling shares back to the company at artificially low prices shortly before it was bought by GSK for more than $3 billion in cash and assumed debt.

Finnerty's case is one of several that have been brought by former employees against Stiefel over its repurchase of company stock shares ahead of the GSK acquisition for a fraction of their valuation in the deal.

The company and former CEO Charles W. Stiefel have been cleared in some cases, but the jury awarded Finnerty the difference between the amount he received for selling his 28 shares back at $16,469 per share in January 2009 and the $69,705 value each would have had that April when GSK announced it would purchase Stiefel.

Stiefel told the panel that if the ruling in Finnerty's favor were allowed to stand, it would compel both public and private companies to publicly disclose any discussions about possible mergers or similar deals, potentially damaging business activity and going beyond the scope required in securities laws.

But Finnerty and the U.S. Securities and Exchange Commission, which filed an amicus brief on his behalf, said that position is an exaggeration.

Finnerty's attorneys said in a statement the decision is an important one for those who favor more transparency from corporations to their shareholders.

"This is an important decision for shareholders because it requires companies to update or correct any prior statements that become misleading by subsequent events," attorneys Peter Prieto and Stephen Rosenthal said in a statement. "Those subsequent events now need to be disclosed if it renders the prior statements misleading or incorrect."

Circuit Judge R. Lanier Anderson III and District Judges James S. Moody and Harvey E. Schlesinger sat on the panel for the Eleventh Circuit.

Finnerty is represented by Norman Segall of Segall Gordich PA and Stephen F. Rosenthal, Peter Prieto and Matthew P. Weinshall of Podhurst Orseck PA.

-Stiefel Laboratories and Charles Stiefel are represented by Todd Wozniak, Elliot Scherker, Hilarie Bass, David A. Coulson, Brigid F. Cech Samole and Rachel A. Canfield of Greenberg Traurig LLP.

The case is Finnerty v. Stiefel Laboratories Inc. et al., case number 12-13947, in the U.S. Court of Appeals for the Eleventh Circuit.

--Additional reporting by Nathan Hale, Ben James and Scott Flaherty. Editing by Andrew Park.