

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re ICONIX BRAND GROUP, INC., et al.	:	Civil Action No. 1:15-cv-04860-PGG
_____	:	
	:	<u>CLASS ACTION</u>
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	X	

REPLY DECLARATION OF KYLA GRANT IN FURTHER
SUPPORT OF LEAD PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION AND
LEAD COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND EXPENSES

I, Kyla Grant, declare as follows pursuant to 28 U.S.C. §1746:

1. I am an attorney at the law firm of Saxena White P.A., Court-appointed Lead Counsel with Robbins Geller Rudman & Dowd LLP for Lead Plaintiffs City of Atlanta Firefighters’ Pension Fund and City of Atlanta Police Officers’ Pension Fund and the certified Class in this securities class action (the “Litigation”). I am familiar with the Litigation and have personal knowledge of the matters set forth herein.

2. Attached as Exhibit 1 is a true and correct copy of a letter, dated December 26, 2019, filed by class member James J. Hayes in the Litigation (ECF No. 158).

3. Attached as Exhibit 2 is a true and correct copy of: David Glovin, ‘Vexatious’ *Geologist Makes Class-Action Fights His Business*, BLOOMBERG, Nov. 10, 2011.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed this 16th day of January 2020, at White Plains, New York.



KYLA GRANT

EXHIBIT 1

James J. Hayes
4024 Estabrook Dr.
Annandale, VA 22003
703-941-4694
jjhayes@toast.net

December 26, 2019

Hon. Paul G. Gardephe
U.S. District Court, S.D.N.Y.
U. S. Courthouse
500 Pearl Street
New York, NY 10007

Re: *In re ICONIX BRAND GROUP, INC., et al* Case No. 1:15-cv-04860-PGG

Dear Judge Gardephe:

I purchased 500 shares of ICONIX BRAND GROUP INC. on March 20, 2015, at \$35 per share, and sold these shares on December 4, 2015, at \$6.80 per share and am therefore a Class Member (brokerage confirmations attached). My recognized loss is \$23.74 per share. Notice pg. 5.

Objection to Proposed Settlement

I object to the proposed Settlement on behalf of Class Members purchasing Iconix shares after January 2, 2015, a period in which Iconix did not form the overseas joint ventures that were the basis of Lead Plaintiffs scheme fraud allegations. Conflicted Lead Counsel overlooked fraud on the market allegations when constructing the Consolidated Amended Complaint and the Second Consolidated Amended Complaint. Fraud on the market claims under Section 10b-5(b) and Rule 10b-5(b) of the Exchange Act are infinitely superior to scheme fraud for Iconix purchasers near the end of the class period.

The proposed Settlement, however, offers Class Members an average recovery before attorney fees and expenses of \$0.08 per share, which is 0.56% of recognized loss for investors purchasing shares between April 20, 2015, and August 6, 2015. It reduces to .42% after deduction of attorney fees. The minuscule Class recovery contrasts starkly with Lead Counsels' \$242 average hourly fee award. The low recoveries reflect the weak bargaining position due to conflicted Counsels' failure to include fraud on the market allegations after the Court dismissed scheme fraud allegations in the Consolidated Amended Complaint.

The Notice at page 3 asserts that "Lead Plaintiffs' principal reason for entering the

Settlement is the benefit to the Class now," but this is false as the only beneficiaries, after costs, are the Lead Plaintiffs, Lead Counsels, Claims Administrator, Consultants and the Mediator who together will net \$1.75 million. Although, the Court granted the Lead Plaintiffs' request to amend the Consolidated Amended Complaint, conflicted Lead Counsel did so in a desultory fashion designed to salvage contingent attorney fees and expenses in a mediated settlement. While disappointing, it shows that no matter the outcome, the lawyers always win, and their clients always lose in self-directed securities class action litigation.

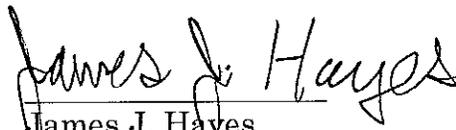
The scheme fraud alleged against the Iconix officers and directors and BDO, as conspirators with the Iconix Defendants, is precisely the abusive securities litigation that the Private Securities Litigation Reform Act (PSLRA) intended to eliminate and the Court could do so now by disapproving the proposed Settlement. Disapproval would reaffirm the Court's prior decisions dismissing the Consolidated Amended Complaint against the Iconix Defendants and, recently, the Second Consolidated Amended Complaint that included BDO. Approval of the proposed Settlement will only perpetuate abusive scheme fraud litigation, which Congress intended to eliminate with the passage of the PLSRA.

If the Court disapproves the proposed Settlement, it should grant leave for new plaintiffs, including the Objector, to amend the Consolidated Amended Complaint to include fraud on the market claims on behalf of Iconix purchasers from January 2, 2015, through November 5, 2015, against Iconix and nominally against the Iconix officers with Sarbanes Oxley responsibilities for Iconix's Q1 and Q2 2015 financial reports.

Disapproval of the proposed Settlement would exclude the Lead Plaintiffs as they were net sellers of Iconix shares in the amended class period. With the Lead Plaintiffs out of the action, Lead Counsel could then represent Iconix purchasers in the amended class period. The Court's opinion could alert Lead Counsel to separately notify the Court of their interest in representing the 2012 Iconix purchasers in a fraud on the market action against Iconix. If both counsels express interest, the Court could have the firms prepare amended complaints, selecting the firm with the best complaint as Lead Counsel. If neither firm seeks the Lead Counsel role, the Court could have the Claims Administrator notify the 2012 purchasers filing claims of the opportunity to retain highly qualified securities counsel to file an amended complaint.

Section 10b-5(b) and Rule 10b-5(b) of the Exchange Act define fraud on the market claims for any person "to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made... not misleading." Iconix Q1 and Q2 2015 financial reports contain many untrue statements of material fact as described in the Consolidated Amended Complaint in §§ 118-124 and 216- 227. Because the new amended complaint would not allege scheme fraud under Section 10b-5(a) and Rule 10b-5(a), it would not be necessary to include allegations of scienter.

Respectfully Submitted,


James J. Hayes
Objecting Class Member

CERTIFICATE OF SERVICE

I, James J. Hayes hereby certify that a copy the foregoing Objection to Proposed Settlement is served by United States Mail on December 26, 2019 on the following parties as indicated below:

Mark Millkey
Robins Geller Rudman & Dowd LLP
58 South Service Road, Suite 200
Melville, NY 11747

Scott D. Musoff
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036

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Account Name:

JAMES J HAYES

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TRADE DATE	SETL DATE	MKT / CPT	SYMBOL / CUSIP	BUY / SELL	QUANTITY	PRICE	ACCT TYPE	PRINCIPAL	COMMISSION	NET AMOUNT
03/20/15	03/25/15	3 1	CIEN	BUY	800	\$24.80	Margin	PRINCIPAL	\$19,840.00	\$10.99
CIEN CORPORATION AS OF 03/20/15 OPTION ASSIGNMENT PUT CIEN 03/20/15 21								PRINCIPAL		
								COMMISSION	\$19.99	
								NET AMOUNT		\$17,519.99
03/20/15	03/25/15	3 1	ICON	BUY	500	\$35.00	Margin	PRINCIPAL	\$17,500.00	
ICONIX BRAND GROUP INC AS OF 03/20/15 OPTION ASSIGNMENT PUT ICON 03/20/15 35								COMMISSION	\$19.99	
								NET AMOUNT		\$17,519.99
03/23/15	03/24/15	3 4	GII	SELL	1	\$6.20	Margin	PRINCIPAL	\$6.20	\$4.80
PUT GII 04/15/15 115 GII APPAREL GROUP LTD OPEN CONTRACT								COMMISSION	\$4.80	
								OPT REG FEE	\$0.02	
								FEE	0.02	
								NET AMOUNT		\$604.86

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 4024 ESTABROOK DRIVE
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TRADE DATE	SETL DATE	MKT / CPT	SYMBOL / CUSIP	BUY / SELL	QUANTITY	PRICE	ACCT TYPE		
12/04/15	12/09/15	6 1	ICON	SELL	500	\$6.80	Margin	PRINCIPAL	\$3,400.00
								COMMISSION	\$5.00
								FEE	\$0.07
								NET AMOUNT	\$3,394.93

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EXHIBIT 2

Markets

'Vexatious' Geologist Makes Class-Action Fights His Business

David Glovin

November 10, 2011 4:46 PM

James J. Hayes agreed to use \$300,000 he was paid in a lawsuit settlement in 2008 to start a foundation to create "a more harmonious working relationship between shareholders and their advocates."

It hasn't worked out that way, according to subsequent legal opponents. Hayes is using the money to finance objections to settlements in class-action lawsuits involving companies whose shares he owns. Because a class action can't be settled without a judge's approval, his aim is to block a deal that he says isn't fair until lawyers change the accord's terms -- and pay him a fee.

"It's a vehicle I'm using in objecting," Hayes, 66, said in an interview about his foundation. "You can call it a business."

Hayes, a former geologist who never attended law school, won the \$300,000 payment to his Foundation for Efficient Markets in March 2008 after objecting to a \$3.2 billion settlement of a fraud suit against Tyco International Ltd.

Since then, he's pressed challenges to accords valued at more than \$700 million in five other cases, delaying payouts to investors for as long as a year.

Hayes appeared today in federal court in Manhattan to oppose the settlement in a suit against Harmony Gold Mining Co. The company, based in Randfontein, South Africa, was accused of understating costs in public filings, to investors' detriment.

IPO Case

In another pending case, Hayes objects to a \$586 million accord in a suit in which dozens of underwriters including Credit Suisse Group AG were accused of rigging initial public offerings of technology companies in the 1990s.

Hayes rejected an offer of \$300,000 to drop his objection, according to a person familiar with the case. Hayes declined to comment on the figure. He said he would accept \$300,000 if the plaintiffs' lawyers changed the deal terms.

Plaintiffs' lawyers in the IPO case, in court papers seeking dismissal of Hayes's claims, called him "an unceasingly litigious, obdurately vexatious man with little regard for the merit of his arguments, his chances of success, or the inconvenience, expense and disruption he foists" upon others.

U.S. District Judge Shira Scheindlin, presiding over the case in New York, called Hayes a "serial objector."

Such objectors, who are usually lawyers representing clients, routinely appear in group lawsuits brought seeking to block a deal they say isn't fair.

Changes, Delays

Sometimes their complaints spur changes, especially if they can argue that too much of the recovery is earmarked for lawyers' fees, said Edward Brunet, a professor at Lewis &

Clark Law School in Portland, Oregon. At other times, objectors achieve only delays, he said.

“They are very unpopular,” Brunet said. “But it’s a profitable business because there are these side deals.”

Hayes said in interviews by phone and at a restaurant in Arlington, Virginia, that he isn’t just after payments like the one he got in the Tyco case. Hayes said he’s long been an advocate for shareholder rights.

“I like to do well by doing good,” he said. “I really want what everyone else says they want -- fairness in class actions.”

Since the mid-1980s, he has been filing suits, objecting to settlements and organizing investors to oppose what he called undervalued takeovers.

Sued by SEC

The Securities and Exchange Commission sued Hayes and a partner in 1984 for misleading investors whom they urged to reject an acquisition. Hayes settled without admitting or denying wrongdoing.

In the Tyco suit, over claims the company defrauded investors, Hayes objected to the settlement calling it inadequate and unfair.

He dropped his objection after lawyers paid \$300,000 to his new foundation and \$80,000 to him and his lawyer, according to court papers. In the Tyco settlement, Hayes said his foundation had tax-exempt status. Hayes said in an interview that the foundation wasn’t tax exempt.

Hayes attributes his success in the Tyco case to the specter of a lengthy appeal delaying settlement payments including \$464 million in attorneys’ fees.

He's using a similar strategy in the IPO case, in which he was among six objector groups. Others settled, he said. They received a total of \$1.7 million, according to the person familiar with the case who didn't want to be identified because the payments weren't public.

Two-Year Delay

"I've already delayed -- I won't say 'I' -- it's already been delayed for two years," Hayes said.

If successful in the appeals court, Hayes's objection may scuttle the entire IPO settlement, he said. He believes the agreement provides money to undeserving investors while shortchanging those who were truly harmed.

"Even a frivolous appeal will prevent" an immediate payout, he said. "So they're usually willing to settle for some payment."

Jay Eisenhofer, a plaintiffs' lawyer in the Tyco case, didn't return calls about the payment to Hayes's foundation. Victoria Harmon, a spokeswoman for Zurich-based Credit Suisse, declined to comment on Hayes's role in the IPO case.

Howard Sirota, one of the lead plaintiffs' lawyers in the IPO case, filed in 2001, said investors "have been delayed an additional two years by a sometimes extortionate objector."

Eager for Fees

Plaintiffs' lawyers, Hayes said, are so eager to settle and collect their fees that they'll reach deals that don't benefit investors.

Hayes hasn't won any of his other challenges, though not for a lack of trying. When he's not playing bridge, the Kansas-born self-taught litigator spends his days at the

George Mason Law School library in Arlington, Virginia, near his home, researching arguments for legal briefs.

“This has completely absorbed my life,” Hayes, hearty and slightly stooped, said of his of vocation. “I’ll think of issues that nobody else sees.”

Hayes today asked U.S. District Judge Barbara Jones in New York to schedule a hearing at which he could question an expert the plaintiffs used to help arrive at the Harmony settlement figure, \$9 million.

Hayes argued the money represents 10 percent of investors’ losses and should be closer to \$30 million. Harmony’s lawyers said it’s about 16 percent and represents a “concrete benefit” for investors.

Settlement Approved

The judge rejected Hayes’s request and approved the accord.

“Even 10 percent is an excellent return,” she said.

U.S. Judge Judith Wizmur in 2006 fined Hayes \$20,000 for “unreasonable and vexatious” litigation when he challenged the bankruptcy settlement of a Genesis Health Ventures Inc. case in Delaware.

Hayes hired an art student to draw cartoons he submitted to the judge with what he called ideas for “a viable alternative,” according to court records. One drawing depicted the judge handing out what the artist called “Judge Judy dollars.”

“Mr. Hayes has turned the system inside and out,” Wizmur said in court. He keeps “coming back to the same issue,” the judge said, “the same party, the same issue, the same response.”

Hayes said the sanction reflects the judiciary’s bias against laymen who act as lawyers. As to his persistence, he said he’s just as zealous as someone with a law license.

Private Investigator

What upsets him, he said, is a private investigator who he said was set upon him by the plaintiffs’ lawyers in the IPO case.

The investigator asked Hayes’s bridge partner of 30 years where he could find Hayes’s next of kin in case “something happened” to him, Hayes wrote in a Nov. 3 court filing in which he alleged “threats and intimidation.”

Sirota, the plaintiffs’ lawyer who hired the investigator, said it was “perfectly reasonable” to probe Hayes’s foundation, and that he wasn’t threatened.

The IPO lawyers, Sirota said, simply want Hayes “to take the money and go away -- essentially what he did in Tyco.”

The Tyco case is In Re Tyco Securities Litigation, 1:02-md-01335, U.S. District Court, District of New Hampshire (Concord). The IPO case is In Re Initial Public Offering Securities Litigation, 1:21-mc-00092, U.S. District Court, Southern District of New York (Manhattan).

(Updates with today’s hearing in sixth, 30th paragraphs.)

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