

Corporate & Financial Weekly Digest

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Video Game Company Shareholder Class Action Suit Dismissed

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Shareholders of The9, Ltd., which operates online video games in China, filed a class action against the company and certain of its current and former officers for violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, alleging that defendants fraudulently misrepresented facts relating to the likelihood of renewal of the company's most profitable exclusive license. The U.S. District Court for the Southern District of New York held that plaintiffs failed to adequately plead fraud and granted the defendants' motion to dismiss.

Plaintiffs claimed that certain executives made false statements in earnings calls, filings with the Securities and Exchange Commission and press releases regarding the likelihood of renewing an exclusive license to provide and run the networks and servers for the videogame "World of Warcraft" (WoW), which accounted for 90% of the company's revenues. Plaintiffs claimed that the company's executives engaged in a scheme to personally benefit from WoW before the expiration of the WoW license, which was ultimately not renewed, by, among other things, selling their shares of The9 during the class period. However, only one executive sold her shares, under a Rule 10b5-1 plan, and the company's president actually increased his beneficial holdings during the class period.

The court held that plaintiffs failed to sufficiently allege that defendants personally benefitted from the purported fraud. Because the inference that the company made a concerted effort to renew the license was stronger than the inference supporting scienter, the court rejected the plaintiffs' claims and granted the defendants' motion to dismiss. (*Glaser v. The9, Ltd.*, 2011 WL 1106713 (S.D.N.Y. March 28, 2011))

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