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Fight Heats Up To Lead Carnival Investors' Suit Over Virus

By **Nathan Hale**

Law360 (October 6, 2020, 5:40 PM EDT) -- Two retirement funds are opposing a bid by a solo investor and Stull Stull & Brody to lead options investors in consolidated suits alleging Carnival Corp. hid COVID-19 infections on its ships, calling the proposal an "improper end-run around" the Private Securities Litigation Reform Act.

The funds for New England carpenters and Massachusetts laborers, which are represented by Bernstein Litowitz and Kessler Topaz, told a Florida federal court Monday they are the presumptive lead plaintiffs because they have asserted the largest financial interest in the related Carnival suits and have specifically said their suits involve claims on behalf of Carnival options investors.

The funds argued in their opposition memorandum that Carnival options investor Abraham Atachbarian has already acknowledged his suit should be consolidated with theirs, which allege virtually identical claims against the same defendants over the same purported misconduct. They also argue Atachbarian and Stull did not timely seek a lead role and improperly set their own deadline, which no other investors followed.

"Atachbarian's attempt to manufacture a role for himself and his counsel by claiming that separate leadership is required to represent options investors is improper and should be denied," the funds said.

The New England funds, whose cases have already been consolidated, noted that five other Carnival investors filed competing motions for lead plaintiff alongside theirs but have all either withdrawn their applications or conceded that the two funds should be selected.

The funds said their claimed losses of approximately \$5.7 million are the largest of any party, 62 times larger than Atachbarian's claimed loss of \$91,737.

They also rebutted Atachbarian's **claim** that he and Stull should be entitled to leadership roles to represent options investors because the two funds did not trade in options.

"Courts routinely deny requests by 'niche' investors like Atachbarian to carve out a separate class and splinter the leadership of securities class action litigation as fundamentally incompatible with the PSLRA, which was intended to empower a single lead plaintiff with the authority to manage the litigation 'as a whole,'" they said. "Indeed, if Atachbarian's argument is accepted, every securities case would give rise to a sprawling ecosystem of cases where multiple investors demand separate leadership based on the type of security purchased."

The investors in the proposed class suits **allege** that Carnival hid that its medics were reporting increased COVID-19 cases on its ships, that the cruise company was violating port-of-call regulations by hiding the number and severity of infections on its ships, and that it failed to follow its own health and safety protocols.

By continuing to operate, Carnival ships were responsible for spreading COVID-19 at various ports around the world, investors claim. As a result, Carnival's positive statements about its business were misleading, causing its stock prices to drop when the truth was revealed in news articles.

The suits seek to hold Carnival, CEO Arnold Donald and Chief Financial Officer David Bernstein liable for the drops.

They allege that on April 16, a news article said company executives may have failed to protect passengers from the virus and "continued to operate new cruise departures despite its knowledge that the threat posed by COVID-19 had materialized on its ships and was likely to proliferate further."

The news came while Carnival still had two cruise ships at sea, and its share price dropped \$0.53 that day, according to the lawsuits.

On May 1, another article said the virus spread on cruise ships despite early warning signs to Carnival and its affiliated cruise lines, and further revealed that the government was looking into Carnival's response to the pandemic, according to the suits.

Investors claim Carnival's stock price dropped \$1.97 that day to \$13.93 per share.

Counsel for Carnival declined to comment, and attorneys for the various investors did not immediately respond to requests for comment Tuesday.

The New England Funds are represented by Hannah Ross, Avi Josefson and Michael D. Blatchley of Bernstein Litowitz Berger & Grossman LLP; Naumon A. Amjed, Darren J. Check and Ryan T. Degan of Kessler Topaz Meltzer & Check LLP; and Zachary S. Bower of Carella Byrne Cecchi Olstein Brody & Agnello PC.

Atachbarian is represented by Howard T. Longman of Stull Stull & Brody, Joshua H. Eggnatz of Eggnatz Pascucci PA and Lynda J. Grant of The Grant Law Firm PLLC.

Carnival and its executives are represented by Daniel S. Sinnreich, Richard A. Rosen and Theodore V. Wells Jr. of Paul Weiss Rifkind Wharton & Garrison LLP, and Erin K. Kolmansberger and Mark F. Raymond of Nelson Mullins Broad & Cassel.

The cases are In re: Carnival Corp. Securities Litigation, case number 1:20-cv-22202, and Atachbarian v. Carnival Corp. et al., case number 20-cv-23011, both in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Carolina Bolado. Editing by Steven Edelstone.