

11th Circ. Nixes \$32M Verdict Against Southern Farm

By Erin Coe

Law360, New York (July 30, 2010) -- A federal appeals court has overturned a jury verdict that found Southern Farm Bureau Life Insurance Co. liable for \$31.7 million for defrauding former investors out of money they should have received from an earlier settlement.

The U.S. Court of Appeals for the Eleventh Circuit on Friday reversed the judgment that Southern Farm willfully committed fraud under both the Securities Exchange Act of 1934 and Florida common law. The appeals court held that the verdict could not stand because the lower court's jury instruction was improper, and proof underlying one basis of liability was legally insufficient.

The derivative suit was filed in 2006 on behalf of a corporation created for the benefit of plaintiffs in an earlier shareholder lawsuit against Southern Farm, which was settled in 1987.

Under that settlement, the so-called Plaintiffs' Shareholders Corp. was granted a debenture issued by Florida Farm Bureau Holding Corp., and PSC was entitled to 27.7 percent of any dividends that Florida Holding received from Southern Farm.

The former investors' claims of federal securities fraud and Florida common-law fraud stemmed from Southern Farm's purchase of the debenture, which was PSC's primary asset.

During negotiations, Southern Farm offered PSC \$3.3 million for the debenture based on a valuation done by an actuarial firm and deemed it a "fair price." After PSC and Southern Farm settled on a price higher than the initial valuation, PSC issued a meeting notice and proxy statement to its shareholders, who subsequently voted to approve the sale for \$4.4 million.

The plaintiffs in the current matter are PSC shareholders who objected to the sale, alleging that Southern Farm's valuation was misleading because it failed to disclose certain material facts about the debenture sale to the shareholders and that, as a result, PSC received too little consideration in exchange for the debenture.

The jury found Southern Farm liable for both a Rule 10b-5 violation and common-law fraud, and concluded the insurer should pay compensatory damages of \$31.7 million. The district court denied Southern Farm's renewed motions for reconsideration and a new trial, prompting the appeal.

The Eleventh Circuit on Friday sided with the insurer that the lower court erred because one of the jury instructions imposed on Southern Farm a duty to disclose certain material facts in the course of negotiations regarding the debenture purchase directly to PSC shareholders.

Southern Farm argued that any duty to disclose would have been satisfied by disclosure to PSC's officers or directors, and the appeals court agreed that the instruction was erroneous for this reason.

"Jury Instruction 11's statement that Southern Farm's duty to disclose ran directly to PSC shareholders is an incorrect statement of the law. We are convinced that this instruction 'misled the jury with respect to the applicable principles of law' ... and requires reversal of the judgment against Southern Farm," the Eleventh Circuit said.

The appeals court also found that some of PSC's theories of liability that were based on certain omissions were legally deficient.

"Because we cannot know from the verdict form whether the jury imposed liability on Southern Farm based on one of these impermissible theories, the judgment of the district court must be reversed on this additional ground," the opinion said.

Attorneys representing the parties did not return calls seeking comment.

Circuit Judges R. Lanier Anderson, J.L. Edmondson and Ed Carnes heard this case.

The plaintiffs are represented by Baker & Hostetler LLP.

Southern Farm is represented by Bradley Arant Boult Cummings LLP and Phelps Dunbar LLP.

The case is Gene Badger et al. v. Southern Farm Bureau Life Insurance Co., case number 09-12999, in the U.S. Court of Appeals for the Eleventh Circuit.