Motion to Dismiss a Shareholder Derivative Action Against Primus Telecommunications Group, Inc. Granted

2004-12-15

On December 6, 2004, Judge Brinkema of the United States District Court for the Eastern District of Virginia granted—from the bench and with prejudice—our motion to dismiss a shareholder derivative action against Primus and present and former directors and/or officers of the company.

The complaint, filed in September, alleged breach of fiduciary duties arising out of purported insider trading, corporate waste, mismanagement, and unjust enrichment stemming from purported misrepresentations of Primus's financial condition for the alleged purpose of artificially inflating Primus's stock price. The complaint was an attempt to piggyback on several federal securities fraud class actions consolidated last month and still pending before Judge Brinkema.

In dismissing the case, Judge Brinkema agreed with our argument that the plaintiff failed to allege any facts sufficient to demonstrate a substantial likelihood of personal liability on the part of any of the defendants or to otherwise demonstrate that demand on Primus's board would have been futile as required under Delaware law. The Court also denied leave to amend because, among other things, the plaintiff had chosen to litigate the motion to dismiss rather than to correct numerous factual inaccuracies in his complaint and to attempt to provide factual support for his allegations even after the deficiencies in the complaint had been brought to his attention.

The win was a joint effort of the Northern Virginia and Boston offices, led by David Donovan and Peter Spaeth with assistance from Coale Anderson.