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High Court Nixes Bid To Revive Holders Suit Vs Matsushita
By Debbi Mack
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WASHINGTON -(Dow Jones)- The U.S. **Supreme Court** on Monday refused to consider whether a shareholders lawsuit brought in federal court against Matsushita Electric Industrial Co. Ltd. (MC) should be allowed to continue in light of the settlement of a similar case in a Delaware state court.

If review had been granted, the case would have come before the high court for the second time. After finding that the state court decision in this matter should be given "full faith and credit" in the federal court proceeding, the **Supreme Court** sent the case back to the U.S. Court of Appeals for the Ninth Circuit. The appeals court initially found that it would violate due process for the Delaware judgment to bar the federal court action and later reversed itself after a rehearing.

The two lawsuits at issue were filed after Matsushita began talks to buy MCA Inc. for more than $6 billion. The Delaware class action, filed in September 1990, claimed that MCA directors had breached their fiduciary duties to shareholders under state law by failing to maximize shareholder value in the deal.

In December 1990, the federal class-action lawsuit was filed in California, alleging that Matsushita's tender offer violated federal securities rules. Matsushita and MCA, among others, were defendants in the federal action. However, claims against all parties except Matsushita and its unit, Matsushita Holding Corp., have since been dismissed.

The federal district court refused to certify the class action and entered summary judgment for the defendants. Pending the appeal of that decision, the Delaware case settled. Among other things, the settlement expressly provided for the release of federal claims, according to court filings.

Standing Of Federal Case Is Contested

On appeal, the Ninth Circuit rejected the company's argument that the Delaware judgment should bar the federal case. The appeals court refused to give the state court's judgment full faith and credit, which requires that a conclusive judgment in one state be considered equally valid in all other United States courts, because the Delaware settlement released claims that were exclusively within federal court jurisdiction.

The U.S. **Supreme Court** reversed, finding that the Delaware decision was entitled to full faith and credit, but stated in a footnote that it "need not address the due process claim ... because it is outside the scope of the question presented in this Court ...." This opened the door for the Ninth Circuit to consider the issue, and it once again held that the Delaware settlement did not bar the

federal case. This time, a divided panel of the appeals court found that giving the judgment full faith and credit would violate due process based on the inadequacy of the class representation.

Two days after the opinion was filed, the judge that authored both of the appeals court opinions resigned. Matsushita requested and was granted a rehearing, after which the court reversed itself and found for the defendants.

The opinion was, once again, divided. Judge Diarmuid F. O'Scannlain, who wrote for the court, noted that the high court did not expressly state that the Delaware judgment complied with due process requirements, but opined that the "conclusion was logically necessary to the Court's holding."

Judge O'Scannlain wrote further that "the absent class members' due-process right to adequate representation is protected not by collateral review, but by the certifying court initially, and thereafter by appeal within the state system and by direct review in the United States **Supreme Court** " and that "due process does not require collateral second-guessing of those determinations and that review."

Judge Charles E. Wiggins, in a concurring opinion, wrote that "while the **Supreme Court** did not conclusively resolve the due process issue before the remand, it did send unmistakable signals on that very issue. In three separate passages, the Court indicated that the Delaware courts likely had already conclusively resolved the due process issue. Our original majority disposition in this appeal did not give sufficient weight to these admonitions."

Judge Sidney R. Thomas, in a strongly-worded dissent, noted that the high court's decision in the Amchem Products Inc. v. Windsor case "heralded a new era of judicial scrutiny of class-action certification and settlement. The majority opinion marks a significant retreat from that philosophy, sanctioning a class settlement obtained without any record evidence that the class representatives were even members of the class."

"The majority today gives license to those who would run to a favorable and remote state court to obtain settlements premised on bargain-basement valuations of federal claims, even when those claims clearly predominate over potential state causes of action," Judge Thomas wrote.

He concluded that by denying the federal plaintiffs their right to bring the claims, "we deny them due process of law ... (and) significantly diminish the proper oversight role of the judiciary over class action settlements."

In Amchem and Ortiz v. Fibreboard, decided by the high court within the last two terms, two "global" settlements of asbestos class actions were struck down because of the class members' conflicting interests.

Matsushita now holds a minority stake in MCA, having sold most of its interest to Seagram Co. (VO). The case is Epstein, et al. v. Matsushita Electric Industrial Co. Ltd., No. 99-417.

Research for this article was performed, in part, using Westlaw's computer-assisted legal research service.

-Debbi Mack, Dow Jones Newswires/ Federal Filings Business News, 202-628-7674

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High Court Won't Hear Cigna Challenge To $62 Million Tax Hit
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WASHINGTON -(Dow Jones)- The U.S. **Supreme Court** on Monday refused to hear an appeal brought by Cigna Corp. (CI) and its Connecticut General Life Insurance Co. unit of a $62 million tax deficiency that has generated more than $150 million in interest, according to court filings.

The company differs with the Internal Revenue Service over the correct method for calculating taxable income when affiliated life insurance and non-life (e.g., property, casualty) insurance companies file consolidated returns. While this practice was illegal before 1981, Congress changed the law to allow such consolidated returns subject to certain limitations, which are at the heart of the dispute.

Cigna was formed in March 1982, when Connecticut General Corp. merged with INA Corp. In 1984, a Cigna unit acquired Preferred Health Care Inc. From 1982 through 1985, Cigna prepared consolidated income tax returns using a different method to determine eligible net operating loss than that of the IRS.

Under Cigna's approach, called the "single entity" method, the non-life insurance companies that once comprised the INA group were treated for tax purposes as if they were a single company, as were the former PHC companies. Cigna set off the losses of the INA and PHC companies, respectively, with the income of those companies, and the resulting net losses were deducted from the consolidated net operating loss for all members of Cigna, according to court filings.

The IRS applied the "separate entity" method, in which each of the former INA and PHC companies was treated as a separate entity whose loss, if any, was subtracted from the consolidated net operating loss because the company was affiliated with Cigna for less than five years. Under this approach, Cigna had about $136 million more consolidated taxable income than under the company's approach. The IRS issued notices of deficiency in the amount of $3.4 million to Connecticut General and $58.8 million to Cigna on June 23, 1992.

Connecticut General and Cigna challenged the tax deficiency in the U.S. Tax Court, which ruled in favor of the IRS. The U.S. Court of Appeals for the Third Circuit affirmed, finding the IRS position to be "a permissible interpretation of the statute."

The case is Connecticut General Life Insurance Co., et al. v. Commissioner of Internal Revenue, No. 99-258.

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High Court Grants Mobil/Marathon Bid To Revive $156 Million Award
By Debbi Mack
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WASHINGTON -(Dow Jones)- The U.S. **Supreme Court** on Monday agreed to consider whether Marathon Oil Co., part of the USX-Marathon Group (MRO), and Mobil Oil Exploration & Producing Southeast Inc., a unit of Mobil Corp. (MOB), should be entitled to a total of more than $156 million in restitution from the federal government.

The case arose out of a contract dispute between the companies and the government involving oil and gas leases on submerged lands off the North Carolina coast, according to court filings. The companies claim that government actions taken since they leased the properties prevented them from drilling on the site and essentially amount to a breach of contract.

The government contends that entering the leases did not guarantee the companies a right to drill the property and that the companies simply failed to meet legal requirements that would have prevented the drilling in any case.

Mobil and Marathon were two out of three parties that bought one-third interests in the off-shore leases in 1981. In exchange, each company paid the government more than $78 million in "front-end cash bonuses" and a total of more than $264,000 each in annual rent during the leases' ten-year primary term.

After the leases were signed, the companies ran into a convoluted series of legal roadblocks, according to court filings. Among other things, North Carolina objected to the companies' plan of exploration and to the issuance of a drilling permit. The companies agreed to conduct a special environmental review. Congress later enacted the Outer Banks Protection Act, which resulted in a temporary moratorium on oil exploration in the lease areas and created further review requirements. Although the statute was later repealed, the state continued to object to the companies' exploration plan.

In October 1992, Marathon, Mobil, and other companies with off-shore leases joined a breach-of-contract lawsuit filed by Conoco Inc. (COCA). The companies sought restitution of the up-front cash payments and the annual rental. Eventually, all the parties except Mobil and Marathon settled.

The U.S. Court of Federal Claims ordered the government to pay the bonuses back to the companies, but found it was not liable for the rental payments. On appeal, a divided panel of the Federal Circuit reversed the decision, finding that none of the parties had breached the lease agreements.

"Rather, Marathon (and Mobil have) been unable to obtain the necessary Government approvals that would allow (them) to go forward with exploration of the lease site," Judge S. Jay Plager wrote for the court, noting further that this problem arose before the Outer Banks Protection Act had been passed and continued after it was repealed.

"This is not a case of a supervening act that makes performance impossible, but simply a playing out of the express provisions of the agreement," the court concluded.

Judge Pauline Newman wrote in dissent, "The Outer Banks Protection Act was enacted after the contract with Marathon was made and paid for. These subsequent events were all outside of the control of Marathon. It is the government that prohibited performance of the contract .... It is hornbook law that when a contract becomes impossible of performance through events outside the control of a party, restitution is an appropriate remedy."

"I do not fault the decision now to bar exploration of the Outer Banks; I fault the refusal to give back what Marathon paid for the right to explore the Outer Banks. Whatever the government's power to avoid its contractual obligations, this does not also entail the right to retain the consideration paid in contract," Judge Newman wrote.

The cases are Mobil Oil Exploration & Producing Southeast Inc., No. 99-244, and Marathon Oil Co., No. 99- 253. Research for this article was performed, in part, using Westlaw's computer assisted legal research service.

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