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Cohen & Gresser Dodges Pangea's \$10M Malpractice Suit

By **Stewart Bishop**

Law360, New York (March 13, 2014, 5:35 PM ET) -- A New York judge on Thursday dismissed Pangea Capital Management LLC's \$10 million legal malpractice suit against Cohen & Gresser LLP over alleged improprieties stemming from an acquisition by Pangea, finding the plaintiff failed to plead the firm knew of any wrongdoing.

During oral arguments in a Manhattan courtroom, **Pangea's suit** was dismantled piece by piece, as New York Supreme Court Judge Charles E. Ramos tossed one claim after another, ultimately finding that Pangea co-managing partner Mark Branigan had kept the firm in the dark about purported misconduct by Pangea's other managing partner John Lakian, and thus Pangea had failed to plead the necessary elements to sustain its suit.

"Absent an allegation of knowledge on part of the attorneys, these causes of action have to fall," Judge Ramos said.

The lawsuit was filed nearly a year after Pangea shareholders hit high-profile company partner John Lakian with a \$20 million suit for allegedly diverting \$8 million to a company he treated as his "**personal piggy bank**" and subsequently "ran into the ground." Cohen & Gresser served as counsel to Pangea in connection with the acquisition while personally representing Lakian in other matters, causing a conflict of interest, according to the complaint.

In 2009, Cohen & Gresser served as counsel to Pangea in connection with its \$3 million acquisition of a controlling interest in Capital L Group LLC, a holding company affiliated with private equity firm Aegis Capital Corp. Lakian and his cohort Diane Lamm then funneled money out of Capital L for personal use, while at the same time being represented by Cohen & Gresser, the investment firm claims.

An attorney for Cohen & Gresser, Howard I. Elman of Matalon Shweky Elman PLLC, told Judge Ramos that in order to prevail on a claim of aiding and abetting fraud, Pangea must plead with particularity that the firm had knowledge of Lakian's actions or had provided substantial assistance.

"There's no allegation at all that Cohen & Gresser was aware of any misrepresentations by John Lakian or that John Lakian wasn't following his duty to keep his co-managing partner apprised," Elman said.

Cohen & Gresser has further argued that agreements signed between Lakian and Branigan, who is also a plaintiff in the malpractice action, permitted them to have conflicts of interest resulting from commercial arrangements with affiliates. Thus, Cohen & Gresser undertook its work with the consent of both of Pangea's managers.

But Pangea maintains that Branigan never gave his consent for Cohen & Gresser to represent both the investment firm and Lakian simultaneously.

While Judge Ramos dismissed Pangea's complaint, he did give it leave to file an amended complaint on certain counts, but advised Pangea to wait for the results of an arbitration currently pending over the various claims against Lakian, Lamm and others. He also voiced doubt about the success of the malpractice action.

"This looks like a stretch and you might end up with sanctions," he told Pangea attorney Mioko C. Tajika of Ingram Yuzek Gainen Carroll & Bertolotti LLP after the end of the hearing. "I think you should wait for the arbitration ... if any of this is true, you'll do well in arbitration."

Cohen & Gresser is represented by Howard I. Elman and Jeremy C. Bates of Matalon Shweky Elman PLLC.

Pangea is represented by Dean G. Yuzek, Mioko C. Tajika and Caitlin L. Bronner of Ingram Yuzek Gainen Carroll & Bertolotti LLP.

The case is Pangea Capital Management LLC et al. v. Cohen & Gresser LLP, case number 651712/2013, in the Supreme Court of the State of New York, County of New York.

--Additional reporting by David McAfee.

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