

## **Thomas Whitelaw Attorneys Obtain Second Dismissal of Shareholder Lawsuit Targeting Merger**

On February 25, 2020, the United States District Court for the Central District of California granted motions to dismiss filed by Emulex Corporation and former members of Emulex's board of directors ("Board") in a case arising from Avago Technologies Wireless (U.S.A.) Manufacturing, Inc.'s (now, Broadcom Corporation) tender offer to Emulex shareholders in 2015..

Thomas Whitelaw attorneys Eric Landau and Travis Biffar represent Emulex's former directors.

The Emulex lawsuit has been pending since April 8, 2015, when plaintiff Gary Varjabedian, a shareholder of Emulex, commenced a putative class action complaint before the United States District Court for the Central District of California, entitled *Gary Varjabedian, et al. v. Emulex Corporation, et al.*, No. 8:15-cv-554-CJC-JCG, following the announcement of Avago's tender offer. The complaint purported to assert claims under Sections 14(d), 14(e) and 20(a) of the Securities Exchange Act of 1934.

Emulex and its former directors first moved to dismiss the lawsuit in October 2015. Following briefing and oral argument, on January 13, 2016, the district court granted defendants' motion to dismiss, holding that plaintiff failed to allege "scienter."

Plaintiff appealed to the Ninth Circuit, and, on April 20, 2018, the Ninth Circuit issued an opinion affirming the dismissal of plaintiff's 14(d) claim, but reversing the dismissal of the 14(e) claim, holding that such a claim does not require scienter, creating a split with five other circuits.

Following the Ninth Circuit's ruling, defendants petitioned the Supreme Court for a writ of *certiorari* based on the circuit split, and on January 4, 2019, the Supreme Court granted defendants' petition. Following oral argument, the Supreme Court issued an order dismissing the writ of *certiorari* as improvidently granted, and the case was remanded to the district court for review under the Ninth Circuit's newly-created negligence standard.

Emulex and the Emulex Directors again moved to dismiss. Following briefing and oral argument, on February 25, 2020, the district court granted defendants' second motion to dismiss for failure to allege negligence or a material omission of fact. Plaintiff has appealed the district court's judgment, and the appeal is pending before the Ninth Circuit.

Thomas Whitelaw is a premier law firm specializing in complex civil, patent, and securities litigation. With decades of experience, our focus is our clients and their unique concerns. We work with each client to develop a relationship that fits their needs and their business. Contact us today for a free consultation from experience you can trust.