

Straight Path, IDT Trading Muddies Del. Class Suit Lead Pick

By **Jeff Montgomery**

Law360 (March 11, 2022, 7:29 PM EST) -- Delaware's Chancery Court has temporarily put off certification of a stockholder class in a suit challenging a deal that released Straight Path Communications claims against its former parent, former CEO and controller, citing questions about potentially conflicted trading by affiliates of an investor seeking to lead the class.

Vice Chancellor Sam Glasscock III **released the written decision** days after telling attorneys for both sides during a related hearing that he would **require an evidentiary hearing** if The Arbitrage Fund still wants the class lead position.

In the written decision, the vice chancellor cited "frankly troubling" but not disclosed details about the timing and number of TAF trades in the stock of Straight Path and IDT Corp., the former parent.

"Using non-public information obtained as a fiduciary for personal gain is not consistent 'with the behavior expected of a self-designated fiduciary,'" the vice chancellor wrote after cautioning that currently available information is insufficient to support TAF's denial of class representative status.

"If TAF seeks to move forward as the representative plaintiff in this action, I will require an evidentiary hearing with submission of facts by the parties so that I may resolve the improper trading issue on a full record."

Another class lead candidate, JDS1, withdrew its candidacy on Thursday, the vice chancellor wrote. After earlier discovery, the investor "indicated that it had a short position on IDT stock 'at times,' including dates in 2017, 2018, and early 2019," beginning with receipt of a confidential document from a committee of Straight Path directors in 2017.

Mark Lebovitch of Bernstein Litowitz Berger & Grossmann LLP, one of the lead firms serving as counsel to the stockholders, said late Friday, "The defendants' window to try making this litigation about anything and everything other than their unprecedented misconduct is closing. We look forward to holding them accountable for their disloyalty at the May trial."

The vice chancellor aired some of the issues on Monday during a hearing to confirm his findings in a February decision keeping claims against IDT alive.

In the case, Straight Path stockholders have argued that former parent company IDT, controlling stockholder Howard Jonas and former Straight Path CEO Davidi Jonas are potentially liable for hundreds of millions in regulatory agency claims imposed on Straight Path for violations while renewing broadcast spectrum licenses.

IDT spun off Straight Path to its stockholders in 2013 and agreed to indemnify the new entity for any regulatory liabilities arising from pre-spinoff misconduct. The Federal Communications Commission later pursued Straight Path for fraudulent reporting in connection with spectrum license renewals in 2011 and 2012.

Verizon Communications Inc. acquired Straight Path in 2018, but court battles have continued over claims by Straight Path stockholders that Straight Path breached its fiduciary duties by allowing IDT and controlling investor Howard Jonas to acquire Straight Path's right to pursue indemnification claims against IDT in connection with the pre-spinoff license renewals.

With the case headed toward a May trial, the Straight Path stockholders have argued that Jonas pressured Straight Path into releasing the vastly larger indemnification right in exchange for \$10 million from IDT as well as a \$6 million sale of some intellectual property rights.

"Unfortunately, almost immediately after the hearing" on Monday, attorneys for the proposed class said in a letter to the court, "defendants' counsel suggested that they intend to use the ongoing class certification related matters, including potentially extensive additional discovery, as another excuse to delay the trial despite your honor's stated preference that the trial dates hold."

Signing the letter were attorneys for Bernstein Litowitz Berger & Grossmann LLP, Labaton Sucharow LLP and Entwistle & Cappucci LLP.

"TAF stands ready to proceed on an expedited basis in whatever manner the court may direct with respect to class certification," the letter said.

Although JDS1 "believes it is adequate to serve as a class representative, it has decided to withdraw its request," the same letter said.

JDS1 is an interest of Florida-based activist investor Julian D. Singer. The Arbitrage Fund is an investment firm that focuses on arbitrage opportunities in publicly announced mergers.

The vice chancellor said allegations of JDS1's trading on non-public information "are both denied and not supported by direct evidence, but if true would be disqualifying, in my view, as inconsistent with the actions this court expects of a volunteer fiduciary."

For TAF, the focus is on the purchase by TAF affiliates of "several short positions in IDT stock" and at least one short sale of IDT stock in late 2017 after counsel for JDS1 received a "70-pages plus proffer of confidential materials" made by a special committee of Straight Path directors. The committee was seeking dismissal from the case at the time.

"TAF itself never traded in IDT," the vice chancellor's opinion said. "But both TAF and its affiliates did make several purchases in Straight Path."

Another stockholder, Ardell Howard, has also been proposed as class lead, although the vice chancellor cautioned those on the defense might want more information first.

Representatives of the stockholders and IDT did not immediately respond to a request for comment.

Minority investors JDS1 LLC and The Arbitrage Fund filed suit in July 2017 accusing Jonas of exerting his control over both IDT and Straight Path to squash the indemnification by refusing to approve any merger that included a sale of the claim. Howard's intervention was approved in October 2020.

Counsel for Straight Path CEO and President Davidi Jonas did not respond to requests for comment Tuesday.

JSD1 and the Arbitrage Fund are represented by Ned Weinberger and Mark Richardson of Labaton Sucharow LLP, Jeroen van Kwawegen, Edward G. Timlin and Alla Zayenchik of Bernstein Litowitz Berger & Grossmann LLP and Vincent R. Cappucci and Joshua K. Porter of Entwistle & Cappucci LLP.

IDT, Howard Jonas and The Patrick Henry Trust are represented by Rudolf Koch, Kevin M. Gallagher, Daniel E. Kaprow, John M. O'Toole and Melissa A. Lagoumis of Richards Layton & Finger PA, Thomas Uebler of McCollom D'Emilio Smith Uebler LLC and Jason Cyrulnik and Paul Fattarusio of Cyrulnik Fattarusio LLP.

Davidi Jonas is represented by Kevin R. Shannon, Berton W. Ashman Jr., Jacqueline A. Rogers and David A. Seal of Potter Anderson & Corroon LLP.

The case is In re: Straight Path Communications Inc. Consolidated Stockholder Litigation, case number 2017-0486, in the Court of Chancery of the State of Delaware.

--Additional reporting by Leslie Pappas, Rose Krebs and Vince Sullivan. Editing by Dave Trumbore.

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