

# SECURITIES LAW360

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## Judge Largely Denies Bid To Toss Backdating Suit

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A judge has kept alive much of a proposed class action filed against information technology company **Juniper Networks** Inc. and some of its senior officers and directors that alleges stock options backdating practices at the company violated securities laws.

In a decision March 31, Judge James Ware of the U.S. District Court for the Northern District of California said that the complaint met the pleading standards for claims that the company and officers filed false registration statements and violated control person liability standards under securities laws.

In the amended consolidated class action complaint, lead plaintiff New York City Pension Funds accuses the company and some of its directors of misrepresenting and concealing backdating and other accounting improprieties.

The suit, which was filed in July 2006, followed Juniper's admission that it would restate financial results from 2003 to March 2006 to the tune of \$900 million.

Defendants Scott Kriens, the company's CEO; Pradeep Sindhu, a co-founder; and Marcel Gani, the former chief financial officer argued that the false and misleading statements claim of the amended complaint did not adequately plead scienter and loss causation.

Judge Ware said that the amended complaint alleged more than that Kriens and Gani held high positions, but rather that they signed false financial documents, knew or were reckless in not knowing that the documents were false and placed themselves in a position of oversight.

However, he said the complaint did not sufficiently plead its case for Sindhu and dismissed that part of the case, saying that Sindhu would not have had responsibility or control over the grant of employee stock options.

Judge Ware did, however, give the plaintiffs a chance to amend the complaint and told them they had until May 1 to do so.

The judge also said that the statute of limitations clock on some of the claims did not start to run until the alleged practices were revealed, which was as early as March 17, 2006. Therefore, the claim can proceed because the first derivative action was filed on July 14, 2006.

But he dismissed anything in the amended complaint based on any allegedly false statements made prior to July 14, 2001.

Judge Ware also batted down the defendants' contention that some of the claims were time-barred and that the plaintiffs did not have standing.

He said the plaintiffs had standing to represent the noteholders' claims because the plaintiffs' claims were based on allegations of improper conduct in issuing the same false financial statements that the noteholders' claim would be based upon.

However, the noteholders were not named as plaintiffs until 2007, so the defendants argued that their claims were time-barred.

But the judge said that the original complaint was filed on behalf of all who bought Juniper securities, not just stocks. The complaint "put defendants on notice that anyone who relied on the allegedly false financial statements and purchased Juniper securities would be included in plaintiffs' action."

In August, Juniper reached a settlement with the U.S. Securities and Exchange Commission over alleged backdating practices without admitting or denying any wrongdoing.

The SEC, which did not fine the company, alleged that it hid expenses from investors and exaggerated income as a result of its practice of backdating options grants for employees and executives between 1999 and 2003.

Attorneys for both sides did not immediately respond to requests for comment Friday.

The lead plaintiffs are represented by **Lowey Dannenberg** Cohen & Hart PC. The defendants are represented by **Wilson Sonsini** Goodrich & Rosati and **WilmerHale** LLP.

The case is In Re: Juniper Securities Litigation, case number 5:06-cv-04327, in the U.S. District Court for the Northern District of California.

--Additional reporting by Erin Coe

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