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Lumber Liquidators Wants A Peek At Docs In Investor Suit

By Jessica Corso

Law360, New York (August 12, 2015, 9:02 PM ET) -- Lumber Liquidators Holdings Inc. told a Virginia federal judge Wednesday that investors should be forced to make public information pertaining to witnesses that could be used to take the company down for allegedly committing securities fraud by hiding sales of illegally harvested wood and cheap, toxic floors.

Documents submitted in confidentiality to the judge should be handed over to Lumber Liquidators' attorneys, the retailer argued in a motion to the court, and should likely be filed on the public record. The company says it has the right to review the ex parte submissions as they relate to six witnesses a putative class of investors hopes to draw upon to make its case that Lumber Liquidators and its top executives filed high earnings reports while obscuring the fact that the money was earned through potentially illegal business practices.

Lumber Liquidators said it has dug up evidence that one of the witnesses cited in the complaint has been misquoted and it has brought its concerns to the court in the form of a motion to dismiss. The company suggests the embarrassment about the incorrect witness testimony might be the reason investors want to keep the submissions quiet.

"Needless to say, however, plaintiffs' narrow concerns cannot be permitted to trump the fundamental principles of fairness and transparency that guide the administration of civil justice," Lumber Liquidators wrote to the judge.

Attorneys for the proposed class couldn't be reached for immediate comment late Wednesday, but the plaintiffs rebuked the company last month for attempting to toss the suit on the basis of the supposed false testimony.

The investors told the court that Lumber Liquidators shouldn't even be offering evidence yet, and that, in any case, their complaint holds up with or without the testimony of one of the confidential witness in question. The complaint includes testimony from five other witnesses as well as news reports and public statements from the Lumber Liquidators itself.

According to the consolidated amended complaint filed in April by lead plaintiffs Greff Kiken, David Lorenzo and Charles Hickman, Lumber Liquidators reported gross margins that were significantly higher than those of its major competitors, Home Depot and Lowe's Cos. Inc., which it attributed to partnerships in China that allowed it to cut out middlemen and work directly with suppliers.

The plaintiffs allege that in reality, the company was buying engineered and laminate flooring manufactured in China that contained and emitted dangerously high and illegal levels of formaldehyde, as well as wood that had been illegally harvested from protected forests in the Russian Far East, home to the critically endangered Siberian tiger and Far East leopard, which are both among the rarest animal species on the planet.

The scheme was only discovered when independent analysts began investigating the company, followed by federal regulators and most recently, journalists at “60 Minutes,” according to the plaintiffs.

Lumber Liquidators has said it could face criminal charges related to its harvesting of wood from Russia. The company has also been under investigation by the U.S. Consumer Protection Safety Commission and other federal and state regulators following a “60 Minutes” expose regarding unsafe formaldehyde levels in laminated flooring from China.

The plaintiffs are represented by Cohen Milstein Sellers & Toll PLLC, Bernstein Litowitz Berger & Grossmann LLP and Pomerantz LLP.

Lumber Liquidators is represented by Cooley LLP.

The case is In re: Lumber Liquidators Holdings, Inc. Securities Litigation, case number 4:13-cv-00157, in the United States District Court for the Eastern District of Virginia.

--Additional reporting by Stephanie Russell-Kraft. Editing by Chris Yates.