

062112-Hearing Results Commentary

On June 21st there was a hearing on motions regarding the counter suit and request for class action that were filed in answer to the SEC's suit against all SEC members in regard to amendments to the SEC Bylaws at the April 17, 2010 SEC Annual Meeting. On May 18, 2011, Judge Mitchell ruled in favor of the members' and stated that the bylaws were legal and took effect at the moment of their passing, the April 17, 2010 Annual Meeting.

This hearing centered on the MOTION FOR LEAVE TO FILE AN AMENDED CROSS-CLAIM by our attorney, Bill Ikard and CROSS CLAIM DEFENDANTS' RESPONSE TO AMENDED MOTION FOR LEAVE TO FILE AMENDED CROSS-CLAIM by the SEC's attorney, Darren Foster of the Kennedy-Han firm. This motion sought leave to replace Charles Wagner as plaintiff for the cross claim with two other SEC members, Carol Auffrey of Quemado and Herbert Myers of Socorro. This "wish to amend" change was requested in order to "avoid any potential conflict between the originally named putative class representative and the members of the putative class."

Foster argued against allowing the change; Ikard argued for. Judge Mitchell ruled that the change was proper and it was so ordered. One of his reasons for allowing the change was that the SEC had sued all of the members, therefore, all members were eligible to serve as representatives of the class.

This change cleared out a lot of the motions filed by the Foster of the Kennedy-Han firm and Judge Mitchell then set about attempting to clear a lot more motions, charges, etc. in an attempt to clarify this case. He determined when the June and July meetings of the Board of Trustees were scheduled and set a hearing for the July 25, 2012 meeting with plaintiffs, defendants, and their lawyers in an OPEN MEETING to attempt to come to an agreement on issues raised in the counter-suit and class action. What happens at this board meeting/hearing will affect the progress of this case. A telephonic conference will take place within approximately three weeks following July 25, 2012.

Other orders by Judge Mitchell: Tom Fitch and Polly Tausch, lawyers in the original case, SEC. vs. members, have requested that they be removed from the ongoing case and paid the fees due them from the original suit. (The Judge awarded fees to the winning lawyers on May 18, 2011 but the Kennedy-Han firm has requested that those fees not be paid until the entire case is settled. Kennedy-Han, the losing firm, is paid by the SEC and receives its money without regard to win/lose.) Judge Mitchell released Fitch & Tausch from the ongoing case and awarded their fees to them. He also requested that the rest of the fee money be removed from the SEC and placed into the registry of the court. This is an amount of \$11,000 as \$2,000 has now been paid to Fitch/Tausch.

Judge Mitchell also wants a current copy of the Bylaws to be made available to the court.

Update 6/23/12:

SEC suit moves forward in court – Defensor Chieftain

<http://www.dchieftain.com/2012/06/23/sec-suit-moves-forward-in-court>

June 23, 2012 -

Judge Mitchell ordered lawyers, plaintiffs, and defendants (SEC) to meet at the July Board of Trustees' meeting to try to settle issues contained in cross claim/request for class certification. It will be a type of mediation. It isn't clear if members can participate. There are a lot of questions: who presides being one of the main ones as the trustees are not capable of running a decent meeting; where will it take place as the regular meeting room is too small for the expected attendees. The Open Meeting Act specifies that the venue must accommodate all that wish to attend..

Judge Mitchell is sharp and goes to the heart of issues, i.e. he told the SEC lawyers in legal talk to stop whining and remember that the SEC Board sued ALL of the MEMBERS thereby placing themselves in the present position.