

THE RECORDER

PRESENTS

Litigation Department OF THE Year

AN **ALM SIGNATURE AWARD** SERIES

The Recorder is pleased to introduce the winners and finalists of its first-ever Litigation Department of the Year awards. Editors scored dozen of entrants in the overall category and five practice specialties, combing through extensive nomination materials, interviewing lawyers who handled specific cases and clients on whose behalf the lawyers worked. We considered matters resolved in the year ending in July and focused on those where the client had a lot to win or lose. We looked for evidence of strategic planning and tactical precision and moments of pure lawyering genius. We considered the breadth and depth of each practice. The choices were often difficult, and certainly subjective. But we think you'll agree that these California practices are worthy of recognition as the Litigation Departments of the Year.



FENWICK & WEST

Facing a massive securities class action with little cash in its coffers, nut distributor Diamond Foods was in a tight spot this fall.

The company's lawyers at Fenwick & West struck a settlement that appeased plaintiffs before the case entered a phase of expensive discovery, and allowed Diamond to move forward with its plans for a turnaround.

To resolve the litigation stemming from its failed bid to acquire Pringles, Diamond agreed to shell out \$96 million—most of which will come in the form of its own stock. Shares have been an unpopular currency for settling securities class actions in recent years due to the volatility in the stock market. But Diamond's predicament called for a different approach.

"We had to be creative about the kind of consideration the company could offer to settle the claims without hampering its ongoing business," Fenwick partner Susan Muck said.

The settlement not only kept Diamond afloat but offered novel protections for class members.

Under the deal, Diamond will have the option to sell the more than 4 million shares of common stock that it has set aside to satisfy the settlement. A unified sale could secure more value for members of the class, who otherwise might inadvertently drive down Diamond's stock price if a large number were to sell upon receiving their shares, Muck noted.

"One aspect of this settlement is we are trying to effectuate a more orderly distribution of those shares," Muck said. "That's a very unusual feature, and it's intended to protect the class."

The Fenwick team drew on their knowledge of securities class actions to address the most likely contingencies, minimizing the costs of the litigation, Diamond general counsel Stephen Kim said.

"Instead of just lawyering for lawyering's sake, we were all looking for practical solutions," Kim said. "That's what the situation demanded, and that's what the Fenwick lawyers excel at."

Having guided the company through various acquisitions, Fenwick was already a known commodity at Diamond when the

securities suits arose, Kim said. With just two lawyers in-house, Diamond relied on Fenwick to face the litigation, he added.

"Throughout that process, Fenwick has acted like an extension of the company," Kim said. "I think it's almost a model of how in-house and outside counsel can work together."

As the Diamond settlement was coming together, lawyers at Fenwick were busy beating back other securities claims filed against their clients. In June, partners Kevin Muck and Jay Pomerantz persuaded a federal judge in the Central District of California to dismiss securities class actions filed against Green Dot, which issues prepaid credit cards. The team also won dismissal without prejudice of claims filed against Equinix, Symantec and Cisco.

The lawyers have already filled their dockets with a batch of new suits. Susan Muck and partner Catherine Kevane entered appearances in September for Vocera Inc., a medical communications company that is facing accusations in the Northern District of California that it misled

investors about how it would be affected by health care reform.

Fenwick's planned office in China also promises to bring the group work on new fronts, Muck said. Though the firm is still preparing to launch the office, Fenwick's securities team has already been tapped by several Chinese companies to handle investigations. The group expects to take on more work of that nature as U.S. venture capital and private equity firms strive to ensure that the Chinese companies in which they invest are complying with American laws, Muck said.

"I've been spending a great deal of time thinking about ways in which we'll be able to take advantage of that office," Muck said.

— Julia Love

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FENWICK & WEST LLP