

Katten Wins Ruling in Favor of Former Waste2Energy Holdings Executives

January 8, 2015

Katten successfully defended Christopher D'Arnaud-Taylor and John Joseph Murphy, former chairmen and chief executive officers of Waste2Energy Holdings, in a federal securities fraud claims suit brought by a bankruptcy trustee that had been assigned securities fraud claims belonging to purchasers of millions of dollars' worth of Waste2Energy debentures in a private placement offering that spanned from September 2009 through mid-2010.

Waste2Energy Holdings, a global clean energy company focused on turning waste product into fuel, had been unable to repay the debentures at maturity and in August 2011 a number of investors, including the largest debenture purchasers, forced Waste2Energy into bankruptcy.

The federal securities fraud claims alleged that the private placement memorandum for the debenture offering contained material misrepresentations regarding the existence and value of Waste2Energy's intellectual property and gasification technology, as well as the company's wherewithal to complete the commissioning of a major gasification facility in Dumfries, Scotland. Chief US District Judge Loretta A. Preska of the Southern District of New York applied the US Supreme Court's decision in *Merck & Co. v. Reynolds* and dismissed the federal securities law claims with prejudice on statute of limitations grounds. The court found that while the original complaint was filed on September 11, 2013, and the plaintiff alleged that it did not discover sufficient facts to plead all of the elements of a securities fraud claim until some point in 2012 —well within the two-year limitations period—the debenture investors actually knew, or had access to readily available information from which they could have known, all of the facts necessary to state a claim more than two years before the complaint was filed. The limitations period thus expired prior to the filing of the original complaint.

The plaintiff also asserted common law claims relating to Messrs. Taylor's and Murphy's alleged mismanagement of the company. The court declined to exercise supplemental jurisdiction over these claims.

The Katten attorneys who represented the former Waste2Energy Holdings executives include Securities Litigation and Enforcement partners Bruce Vanyo and Bill Regan, and Litigation and Dispute Resolution associate Jonathan Rotenberg.

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