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Wendy's Asks For Toss Of Shareholder Suit On Farm Wages

By **William Gorta**

Law360, New York (May 30, 2017, 9:55 PM EDT) -- Wendy's asked a New York federal judge on Tuesday to toss a shareholder suit alleging the company's stagnant stock price was due to a loss of goodwill after the fast food chain refused to participate in a fair-wage program for Florida farm workers.

Theodore M. Grossman of Jones Day, representing the 10 Wendy's board members named in the complaint, said that because shareholder Samuel Trickey never made a demand on the board to force the company to join the Fair Food Program at the behest of farm workers advocacy group the Coalition of Immokalee Workers, he must specify what each board member did that would show his demands had fallen on deaf ears.

"The plaintiff in this case seems to want the court to determine Wendy's board improperly refused to sign a contract with CIW," Grossman told U.S. District Judge Paul A. Engelmayer. Grossman said Trickey cited no negotiations, terms, dates or votes, "or whether the board was involved in any aspect."

He said the decision not to pay a higher price for tomatoes, which under the program would benefit Florida tomato pickers, falls squarely within the business judgment rule and that Trickey would have to show something inherently harmful to the company to overcome the rule.

Trickey's attorney, Gustavo Bruckner of Pomerantz LLP, was happy to pick up that baton.

He said the board's actions were egregious in supporting and patronizing companies that forced their workers to toil under "slave conditions."

"This is so irrational, so extreme," Bruckner said. "They should not be allowed to profit from slavery. In no way should it be protected by the business judgment rule."

He was less forceful when questioned by Judge Engelmayer on whether the board was involved in the decision at all, telling him it was "axiomatic" the board made the call.

"The issue is whether the board as a separate entity owned this issue," Judge Engelmayer said. "You need to plead it was more than axiomatic."

Judge Engelmayer reserved decision on the motion to dismiss.

Trickey filed the suit in October, claiming that Wendy's, the largest purchaser of tomatoes in the fast food industry, set off an eruption of protests when it failed to join in the program, which adds a price premium to fruits and vegetables "to effect wage increases and ensure humane working conditions for the workers who pick fruits and vegetables on participating farms," according to the complaint.

"As a direct result of Wendy's failure to join the FFP, the company's goodwill and reputation have declined, causing the company to become the subject of boycotts and protests across the country," the complaint says.

"I think Judge Engelmayer understands the issues," Bruckner told Law360. "We don't take these issues lightly. The behavior is egregious."

After the arguments, Grossman told Law360, "I said everything in court."

Wendy's did not immediately respond to a request for comment Tuesday.

Trickey is represented by Gustavo F. Bruckner of Pomerantz LLP.

The board members are represented by Theodore M. Grossman of Jones Day.

Wendy's is represented by Mark M. Elliott Jared R. Clark of Phillips Nizer LLP.

The case is Trickey v. Brolick et al., case number 1:16-cv-07789, in the U.S. District Court for the Southern District of New York.

--Editing by Catherine Sum.

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