

Bill 198 Class Action Commenced

October 17, 2006



We wanted to recap for our clients an article from Stikeman Elliott dated October 10, 2006 regarding the first class action resulting from rules relating to civil liability provisions and shareholders' statutory rights in Ontario, referred to as "Bill 198". Bill 198 provides the forum for shareholders to sue Public Companies, their Directors, certain officers and other persons for disclosures containing materially inaccurate, incomplete, misleading, or untimely information. In this case, the plaintiffs allege that revenue was overstated and that management knowingly misstated the financials.

Imax Corporation, its Directors, and its CEO and CFO will likely be responsible to the court for proving they have exercised a reasonable level of due diligence in their financial reporting and disclosure duties in order to mitigate litigation actions.

Please refer to the below interpretation from Stikeman Elliott as a further elaboration on the details of the action commenced.

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First-ever Bill 198 class action commenced

Silver v. Imax Corp., Court File 06-CV-318004CP;

Cohen v. Imax Corp., Court File 51579CP

In a noteworthy development, separate statements of claim have recently been filed by Marvin Neil Silver and Cliff Cohen, both would-be plaintiffs in a proposed class action against Imax Corporation and certain directors and officers of the company. Silver's claim is the first (by a day – Cohen's followed hard on its heels) to invoke the secondary-market liability provisions that were recently added to the Securities Act (Ontario) under Bill 198. These amendments require a plaintiff to obtain leave of the court to make out a claim for misrepresentations in public filings and statements that affect purchases in the secondary market – that is, subsequent to an initial public offering of shares.

The two claims allege that Imax misrepresented its revenues during the period from March to August 2006, in that figures disclosed in its Q4 and annual reports were in excess of actual revenues. The contention of both plaintiffs is that Imax and the individual defendants knowingly misstated the financials – according to Silver in order to inflate the company's share price and the value of the directors' own shareholdings. In August 2006, Imax issued a press release stating that the US Securities and Exchange Commission had made an informal inquiry about the company's timing of revenue recognition for its movie theatre systems, which caused a significant drop in Imax's share price. Both plaintiffs maintain that they and members of the putative class would not have bought Imax shares during the period from March 2006, when the allegedly inflated numbers were released, to the date of the press release, if they had known the true state of the company's revenues.

The disposition of these claims will be watched with interest, as it should set the ground rules for granting leave to seek a remedy under the Bill 198 amendments and may provide guidance on establishing the underlying merits of such a claim.

-- Stikeman Elliot

Discussions and Considerations for Public Companies

As a result of Bill 198, the Canadian Securities Administrators (CSA), which represents the provincial and territorial stock exchanges, has issued a series of regulations through Multilateral Instruments and Notices to expand communication requirements relating to "Disclosure Controls and Procedures" and "Internal Control over Financial Reporting". Multilateral Instrument 52-109 and proposed amendments setting out reporting criteria required for 2006, 2007, and beyond, combined with Bill 198, has significant implications for Audit Committees, Directors and senior management of reporting issuers.

The intent of these new rules and regulations is to improve governance and rebuild corporate credibility through accurate, reliable, and timely communication of information to shareholders. The announcement of the above class action is evidence that Bill 198 is a reality, and public issuers must ensure that they have exercised due diligence with respect to the company's "Disclosure Controls and Procedures" and "Internal Controls over Financial Reporting", under the certification requirements of Multilateral Instrument 52-109.

Multilateral Instrument 52-109 requires CEOs and CFOs of all Canadian publicly listed companies to certify:

- a) The design and implementation of "Disclosure Controls and Procedures" for both interim and annual filings on or after March 31, 2005
- b) The design and implementation of "Internal Control over Financial Reporting" for both interim and annual filings on or after June 30, 2006 (subject to transitional rules)
- c) The evaluation of the effectiveness of "Disclosure Controls and Procedures" and have concluded on their effectiveness in the Management Discussion and Analysis accompanying their annual report for year ends ending on or after March 31, 2005
- d) The disclosure of material changes in the "Internal Control over Financial Reporting" that occurred during the most recent interim period in the Management Discussion and Analysis accompanying their interim or annual report for periods ending on or after June 30, 2006

In addition, for years ending on or after December 31, 2007, CEOs and CFOs are required to certify on the evaluation of "Internal Controls over Financial Reporting", and provide their conclusions on their effectiveness, including a discussion on the method for evaluating their effectiveness in the Management Discussion and Analysis accompanying the annual report.

What We Do

As a risk services business, Horwath Orenstein delivers consulting services on Multilateral Instrument 52-109. What we can do for you:

- Provide an understanding of the certification process, and develop key milestones for achievement
- Provide Risk Assessment and develop a project plan
- Process Documentation creation and Design Evaluation
- Process Testing, Evaluation and Gap Remediation
- Reporting Guidance

How You Benefit

Design, implementation, and assessment of the effectiveness of your organization's "Disclosure Controls and Procedures" and "Internal Controls over Financial Reporting" allow organizations:

- Manage business risks
- Safeguard corporate assets
- Identify better business processes and performance
- Provide evidence of due diligence performed by executives in case of class actions under Bill 198
- Comply with Laws and Regulations
- Improve Operational Efficiencies
- Ensure reliable financial reporting which provides access to capital markets

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