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## Schnader Again Beats \$8M Malpractice Suit At The 2nd Circ.

By **Rachel Scharf**

Law360 (August 31, 2022, 4:49 PM EDT) -- The Second Circuit refused Wednesday to revive a Canadian private equity company's \$8 million malpractice lawsuit blaming Schnader Harrison Segal & Lewis LLP for losses in a joint venture to develop electric vehicle technology.

A unanimous three-judge appellate panel upheld U.S. District Judge Lewis J. Liman's March 2021 **summary judgment order** axing Terracap Ventures Inc.'s claims against Schnader Harrison and former firm attorney Joel Handel.

The **2018 lawsuit** stemmed from a deal in which Toronto-based investment firm Terracap put up \$3.5 million and intellectual property assets in exchange for shares of electric battery manufacturer Brammo Inc. Terracap says Handel, its longtime counsel, failed in 2014 to negotiate provisions that would have stopped its ownership stake from diluting when Brammo later amended its corporate charter.

But the Second Circuit agreed Wednesday with Judge Liman's finding that Terracap had not established a breach of Schnader Harrison's duty of care. According to the panel opinion, Terracap knew the deal did not contain protections against stock-value dilution but signed closing documents anyway.

"The record shows that they asked Brammo directly for a minority approval provision three days before closing, that Brammo declined their request, and that plaintiffs nevertheless remained eager to close the transaction," the judges wrote. "Under these circumstances, it cannot be said that defendants breached their duty of care by (1) not making the same request that plaintiffs had already made, and which Brammo had already declined; or (2) not reminding plaintiffs of what they obviously already knew."

The Second Circuit panel did, however, take issue with Judge Liman's ruling that Terracap lacked standing to sue because the Brammo investment capital came from the private equity company's CEO Larry Krauss and various affiliates, not Terracap itself.

The panel said the Manhattan federal judge needn't have considered the investment's source when evaluating whether Terracap was harmed by Schnader Harrison's alleged malpractice.

"Regardless of the source of the cash used to purchase the preferred shares or the IP assets — whether Krauss, a bank, a rich uncle or lottery winnings — plaintiffs have sufficiently alleged an injury in fact that is both particularized and concrete," the panel wrote.

Yet these findings weren't enough to save Terracap's claims, and the panel affirmed Judge Liman's summary judgment order in its entirety.

Reached for comment on the opinion Wednesday, Schnader Harrison's attorney Howard Elman of Elman Freiberg PLLC said his client is "very pleased with the decision of the Second Circuit."

Counsel for Terracap did not immediately respond to a request for comment Wednesday.

U.S. Circuit Judges Richard J. Sullivan, Steven J. Menashi and Beth Robinson sat on the panel for the Second Circuit.

Terracap is represented by Frank S. Occhipinti and Anthony Princi of Lynn Occhipinti LLP.

Schnader Harrison and Handel are represented by Howard I. Elman and David L. Barres of Elman Freiberg PLLC.

The case is EVIP Canada Inc. et al. v. Schnader Harrison Segal & Lewis LLP et al., case number 21-947, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Andrew Strickler. Editing by Janice Carter Brown.

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