

Fertilizer Co. Officers Diluted Ownership Shares, Suit Says

By **Rose Krebs**

Law360 (October 12, 2018, 8:34 PM EDT) -- A corporation and individual with ownership stakes in fertilizer manufacturer Verdesian Life Sciences LLC filed suit in Delaware Chancery Court claiming company officers entered into a series of self-interested transactions that diluted the value of their membership units.

In a complaint made public Friday, Indiana-based corporation MKE Holdings Ltd. and David Bergevin, both holders of Verdesian ownership units, contend that Verdesian's CEO Kenneth Avery and eight other members of the company's board engaged in a "series of unfavorable" transactions to line their own pockets by approving an offering of units in August with the intention of transferring all of the company's remaining value to themselves.

"The managers entered into those transactions in bad faith, with knowledge that they were not in the best interests of Verdesian and without due diligence and care that would have been exercised by an ordinarily prudent manager," the complaint asserts.

The transactions artificially inflated the company's earnings "based on a widespread, inappropriate pricing and supply scheme" that the officers were aware of, and the earnings have subsequently "plummeted," the complaint claims. Information about the transactions was redacted in the suit, but the members claimed the officers ignored warnings about the deals, and that the company suffered a credit rating downgrade and is in "disarray" due to their actions.

Despite the company's financial troubles, bonuses, perks and "excessive salaries" still continue to be paid, the complaint contends.

In August, the company proposed an offering of membership units with unfair terms that benefited the board members and majority ownership at the detriment of minority owners, the complaint said. Details about the offering was also redacted in the lawsuit.

Verdesian, which manufactures fertilizer and agricultural products, was formed by controlling unit holder Paine Schwartz Partners LLC in 2012, the complaint said. The board is appointed by members of Paine.

MKE Holdings and Bergevin contend the company, after a series of successful acquisitions, started purchasing other businesses from 2014 onward that added no value and piled on significant debt for the purpose of generating bonuses for executives.

Also, the company's officers failed to perform due diligence as to the financial details of the deals, and they provided false and misleading statements about the August offering, such as containing inaccurate per-unit value, according to the suit.

The members, who have invested more than \$19 million in the company according to the complaint, are seeking damages and asking the court for an injunction to halt completion of the August offering.

"We normally don't comment on litigation, but we believe the claims in the complaint to be baseless and without merit," said Avery in a statement to Law360 on Friday.

Counsel for MKE Holdings and Bergevin were not immediately available for comment on Friday.

Counsel information for the officers was not available on Friday.

MKE Holdings and Bergevin are represented by Thomas E. Hanson Jr. of Barnes & Thornburg LLP.

The case is MKE Holdings Ltd. et al. v. Schwartz et al., case number 2018-0729, in the Court of Chancery for the State of Delaware.

--Editing by Adam LoBelia.

Update: This story was updated with comment from Verdesian's CEO.