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Onsemi Board Downplayed Sales Vulnerability, Suit Claims

By **Sydney Price**

Law360 (January 4, 2024, 4:46 PM EST) -- Top brass at semiconductor manufacturing company Onsemi have been hit with a shareholder derivative suit alleging they made false statements to investors about the demand for its products from electric-vehicle manufacturers, which resulted in losses when the company failed to meet its 2022 revenue target.

From May through October of last year, the Onsemi defendants touted the sales of the company's silicon carbide products, which are critical for electrical vehicle manufacturing, according to the complaint filed by Nathan C. Silva on Wednesday in Delaware federal court. But in its third-quarter earnings call, Onsemi finally revealed that it would begin "taking a very cautious approach" with its silicon carbide products due to signs of slowing demand in the automotive segment.

Throughout the class period, Onsemi falsely assured the public that sales of its silicon carbide products, particularly to electric vehicle manufacturers, were strong, the suit alleges. The defendants told investors Onsemi's long-term supply agreements provided "predictable" and "sustainable" performance to drive sales growth, even in tough macroeconomic conditions, which was not true, the complaint alleges.

"Defendants consistently disclosed increasing expected revenue figures for every new [long-term supply agreement] the Company had signed with customers and assured investors that the LTSAs built 'a more strategic relationship and partnership' with the Company's customers," the complaint states.

On May 1, for example, Onsemi told investors that it had "more and more confidence" that it would reach \$1 billion in annual revenue for its silicon carbide products in 2023.

But on Oct.30, during Onsemi's third-quarter 2023 earnings call, the company told investors that it would miss its \$1 billion 2023 silicon carbide revenue target by approximately \$200 million, citing "a mid-single digit decline in automotive given the softness in Europe."

On this news, the price of Onsemi shares fell \$18.18, or nearly 22%, from a close of \$83.52 on Oct. 27, to close at \$65.34 on Oct. 30.

In addition to nominal defendant Onsemi, the suit names 12 individual defendants, including Onsemi President and CEO Hassane El-Khoury.

Onsemi is facing a related federal securities class action in Delaware based on alleged damage to the company's share price due to the firm's claimed omissions, according to the complaint.

"As a direct and proximate result of the Individual Defendants' breach of their fiduciary duties, the Company has suffered damage, not only monetarily, but also to its corporate image and goodwill," the suit states. "Such damage includes, among other things, costs incurred in defending itself in the Securities Class Action."

The suit accuses the defendants of violating the Exchange Act, breaching fiduciary duties, wasting corporate assets, unjust enrichment, abuse of control and gross mismanagement. Silva seeks an order that would require Onsemi to take action to improve internal controls and board oversight, and the individual defendants to pay restitution to Onsemi and disgorge any ill-gotten gains.

Counsel for Silva and a representative of Onsemi did not immediately respond to requests for comment Thursday.

Silva is represented by Seth D. Rigrodsky, Gina M. Serra and Herbert W. Mondros of Rigrodsky Law Firm PA and Joshua H. Grabar of Grabar Law Office.

Counsel information for the Onsemi defendants was not immediately available Thursday.

The case is Silva v. El-Khoury et al., case number 1:24-cv-00007, in the U.S. District Court for the District of Delaware.

--Editing by Jeremy Abrams.

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