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Reporters caught up in Fairfax case

Some well-known business journalists are getting caught in the legal crossfire between a Fairfax Financial and a group of hedge funds it accuses of betting against its shares

Reuters

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Some well-known business journalists are getting caught in the legal crossfire between a Canadian insurer and a group of hedge funds it accuses of betting against its shares.

Last month, in a little-noticed move, Daniel Loeb, one of several prominent hedge fund managers sued by Fairfax Financial, served subpoenas on a number of journalists seeking to take their depositions in the now five-year-old litigation.

Fairfax alleges that Loeb, who manages Third Point LLC, teamed up with famed short-seller James Chanos and SAC Capital Advisors founder Steven Cohen to spread disinformation about the insurer to a number of business journalists. The Toronto-based company claims the hedge fund managers organized a campaign to drive down the prices of Fairfax's shares because they were shorting, or betting against, its stock.

Short sellers profit when a company's share price falls. Loeb, however, appears to have had a recent change of heart about the subpoenas, which were sent to columnist Joe Nocera of The New York Times and former Fortune writer Bethany McLean, among others. A lawyer for Loeb told Reuters on Monday the subpoenas were withdrawn.

"Third Point has no intention of seeking testimony or documents from any member of the media, and any prior subpoenas issued to journalists have been fully withdrawn," said Loeb attorney Bill Carmody of Susman Godfrey in New York.

But at least one other defendant in the case, which is pending in New Jersey state court, is still seeking to take a deposition of a reporter who once wrote about Fairfax. Seeking to take testimony from journalists is often controversial because it can infringe on protection afforded to the press under the First Amendment.

One journalist who may still be deposed is Peter Eavis, a former columnist with The Wall Street Journal. Eavis was served a subpoena by lawyers for Morgan Keegan and Co, another defendant, over columns he wrote about Fairfax when he worked at TheStreet.com.

Fairfax alleges that a former Morgan Keegan analyst gave some of the hedge fund managers advance notice of critical research report he was about to issue on Fairfax.

A lawyer for the Tennessee-based brokerage, which is a division of Regions Financial, declined to comment. Eavis' lawyer, Elizabeth McNamara, said her client had yet to receive the subpoena.

Lawyers for Fairfax recently said in court filings that they may seek to take testimony from former New York Post reporter Roddy Boyd, now a freelance writer. In court papers, Fairfax's lawyers argue that Boyd wrote a number of critical stories about Fairfax after receiving information from people working for the hedge fund managers. Boyd declined to comment.

Fairfax attorney Michael Bowe said if Third Point decides not to go ahead with its depositions of journalists, his client also may abandon plans to take testimony from Boyd.

Reporters often will fight requests to testify on the grounds that it may turn them into advocates for a particular point of view, or it could force them to divulge the identify of confidential sources.

For instance, the Securities and Exchange Commission in 2006 was forced to abandon a plan to take testimony from several journalists during an investigation into allegations that some traders were trying to manipulate shares of online discount retailer Overstock.com. The SEC did a quick about-face and decided not to take testimony from reporters after several news organizations protested.

A number of the reporters served with subpoenas by Loeb's lawyers had hired lawyers to fight the deposition demand, said people familiar with the situation.

Loeb and the other hedge fund managers contend they did nothing wrong and are being targeted by Toronto-based Fairfax simply because some of their funds were betting on a decline in the insurer's stock price.

The case is captioned Fairfax Financial v. SAC Capital Management, Morris County, NJ, MRS-L-2032-06.

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Court Dismisses Fairfax Financial Suit

By Amy Or

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A New Jersey State Court judge Friday dismissed Canadian insurer [Fairfax Financial Holdings Ltd.](#)'s lawsuit against hedge-fund managers Dan Loeb, Jim Chanos and their firms, alleging the managers were part of a group that targeted the Toronto company in a short-selling conspiracy.

In his judgment, Judge Stephan Hansbury said New Jersey wasn't the correct jurisdiction to hear the case against Third Point LLC, Kynikos Associates LP and their executives.

"Fairfax is located in Canada and has no direct connection with the State of New Jersey," he wrote. "None of the defendants maintain offices, reside in or have any direct connection with the State of New Jersey."

But unlike his earlier verdict involving SAC Capital Advisors LP, the judge didn't mention the merits of the case itself. In September, the judge dismissed Fairfax's allegations against the hedge-fund giant, saying there was no evidence SAC was part of a short-selling conspiracy.

A lawyer for Fairfax, Michael Bove of Kasowitz, Benson, Torres & Friedman, said the ruling "did not in any way address the merits of plaintiffs' claims." He said they would appeal the decision at the appropriate time.

Fairfax alleged that a group of hedge funds had worked together to spread false information about the insurer that would enable them to profit from short-selling in Fairfax shares and sought \$6 billion in compensatory damages.

SHARE



In short selling, a trader borrows shares to sell them, hoping to buy them back later at a lower price, settle the loan and pocket the difference. Short selling is profitable when the shares in question drop.

The move by the Toronto company illustrates how companies are getting more aggressive about challenging hedge funds that hope to profit by declines in the companies' share prices.

Bill Carmody, a litigator who represented Loeb and Third Point, said that, while Fairfax can attempt to file another lawsuit in New York, he believes the chances of it being heard is low.

"It's too late," he said. "This is final justice for Third Point."

In a statement, Mr. Chanos said, "We are gratified by the Court's ruling, but have no further comment at this time."

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