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Investors To Co-Lead Suit Over $2.8B Lifetime Fitness Buy

By **Jeff Zalesin**

Law360, New York (July 13, 2015, 3:58 PM ET) -- St. Clair County Employees' Retirement System and an individual investor will share the lead role in litigation over Life Time Fitness Inc.'s $2.8 billion private equity buyout, a Minnesota federal judge ruled Friday, finding those investors together would serve the class better than either alone.

U.S. Magistrate Judge Jeffrey J. Keyes appointed Matthew Lusk and St. Clair as co-lead plaintiffs, reasoning that St. Clair has the larger financial stake but faces a risk of being targeted for a potential conflict of interest. He also approved Lusk's law firm Block & Leviton LLP and St. Clair's firm Robbins Geller Rudman & Dowd LLP as co-lead counsel, saying the firms have worked together successfully before.

Lusk and Life Time had argued that St. Clair should not be the lead plaintiff because the pension fund manager had filed a related derivative action on behalf of Life Time in Minnesota state court, meaning it could be accused of litigating both for and against the company. St. Clair denied having a conflict and said it would drop the state suit if named lead plaintiff in the federal case, but Judge Keyes said that Life Time still might assert a conflict-of-interest defense against St. Clair.

"It is not this court's intent to foreclose arguments against class certification, but the court does have an interest in managing and maintaining the orderly progression of the case," the judge wrote.

Letting Lusk and St. Clair serve as co-leaders would protect both individual and institutional investors while making sure the litigation isn't held up by disputes over St. Clair's suitability as a representative, the judge said.

In addition to making Block & Leviton and Robbins Geller co-lead counsel, Judge Keyes approved Lusk's liaison firm Nichols Kaster PLLP and St. Clair's liaison firm Reinhardt Wendorf & Blanchfield as co-liaison counsel. He said he had no doubt about the chosen firms' credentials and resources.

"Also, this court is persuaded that counsel selected by the respective lead plaintiffs will be able to efficiently prosecute this litigation with minimal overlap or duplication of effort and expense, based on those firms' substantial experience in securities class litigation and their involvement as co-counsel in prior cases," the judge wrote.

If attorneys' fees are eventually awarded, he added, the court will review each firm's work to make sure they aren't needlessly duplicating one another.

Private equity firms Leonard Green & Partners and TPG Capital LP announced their **plans to acquire** Life Time for more than $2.8 billion in March. The deal came after Life Time had said it was **exploring a conversion** of its real estate assets into a real estate investment trust.

Lusk filed suit in April, claiming that the go-private deal undervalued Life Time and was supported by a misleading proxy statement. He alleged that investors hadn't been given enough information to assess whether Life Time CEO Bahram Akradi had a conflict of interest and whether the company's real estate assets were being undervalued.

In May, U.S. District Judge John R. Tunheim denied Lusk's motion to allow some discovery ahead of a decision on his motion to enjoin the shareholder vote on the buyout, finding Lusk hadn't shown he would be unduly prejudiced without the discovery. As a result, Lusk withdrew his preliminary injunction motion but kept pursuing his claim for damages.
Life Time shareholders voted in favor of the deal at a June 4 meeting.

Jason M. Leviton, an attorney at Block & Leviton representing Lusk, said he was satisfied with the decision appointing co-lead plaintiffs and counsel.

"We did say we have a long-standing relationship with Robbins Geller and that we respect their work," Leviton said.

Attorneys for St. Clair and Life Time did not immediately respond to requests for comment Monday.

St. Clair is represented by Stuart A. Davidson, Mark Dearman, Christopher C. Martins and Danielle S. Myers of Robbins Geller Rudman & Dowd LLP, Garrett D. Blanchfield Jr. and Brant D. Penney of Reinhardt Wendorf & Blanchfield and Thomas C. Michaud of VanOverbeke Michaud & Timmony PC.

Lusk is represented by Jason M. Leviton, Mark A. Delaney and Joel A. Fleming of Block & Leviton LLP and Kai Richter of Nichols Kaster PLLP.

Life Time is represented by Wendy J. Wildung, Matthew Kilby and Justin P. Krypel of Faegre Baker Daniels.

Akradi is represented by Thomas P. Swigert and James K. Nichols of Dorsey & Whitney LLP.

The case is Lusk v. Life Time Fitness, Inc. et al., case number 0:15-cv-01911, in the U.S. District Court for the District of Minnesota.

--Additional reporting by Tom Zanki. Editing by Katherine Rautenberg.