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## Sam Wyly Loses Another Bid to Challenge Computer Associates Settlement

By **Andrew Longstreth**  
 May 11, 2009

Billionaire Sam Wyly and his lawyers at Bickel & Brewer have done just about everything possible to discredit a \$143 million settlement Computer Associates reached with shareholders in 2003. They filed a motion in 2004 to vacate the releases given to CA execs and board members, some of whom were subsequently convicted for their role in the accounting fraud at the company. They also sued the three firms that represented shareholders in the settlement—Milberg Weiss Bershad & Schulman (known today as Milberg); Stull Stull & Brody; and Schffrin & Barroway (today known as Barroway Topaz Kessler Meltzer & Check)—for malpractice. And as we reported last September, they recruited imprisoned former CEO Sanjay Kumar to file a declaration that trashes everyone he worked with, including Sullivan & Cromwell's Robert Giuffra, Jr., who helped the company work out a deferred prosecution agreement.

But all of Wyly's sound and fury hasn't signified much. In August 2007, Long Island, N.Y., federal district court judge Thomas Platt, who approved the 2003 settlement, threw out Wyly's objections to it. And last week, the New York Law Journal reports, the New York Court of Appeals denied his request for certain files from the class action against CA for use in his malpractice suit. In doing so, the court, which affirmed a decision by the First Department of the New York Appellate Division, cited Wyly's challenge to the CA settlement in federal court—in which the release of 23 boxes of documents failed to persuade Judge Platt that there was enough evidence to vacate the deal.

"The district court, which supervised the class actions and has retained jurisdiction, is responsible for protecting the interests of absent class members, which includes monitoring the adequacy of class counsel's performance," wrote Judge Susan Phillips Read for the New York Court of Appeals. "We cannot say that the Appellate Division abused its discretion by, in effect, declining to second-guess the district court's judgment."

Barry Weprin of Milberg, who represents the three firms sued for malpractice, defended the securities class action settlement in an interview with the New York Law Journal, noting that some of the criminal charges against CA execs were brought after the settlement was finalized. "Obviously, if subsequent developments had occurred before the motion for summary judgment was accepted and the case settled, the result might have been different," Weprin said. "We felt at the time it was a fair settlement."

William Brewer III of Bickel & Brewer, lead counsel to Wyly, said in a statement that he's not giving up. He said that the challenge to the settlement is on appeal to the Second Circuit, and that Wyly "will pursue the relevant documents there."

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