

Idaho high court rejects Micron price-fixing claim

July 16 2009, By REBECCA BOONE , Associated Press Writer

(AP) -- The Idaho Supreme Court has refused to revive a lawsuit brought by a shareholder who claimed Micron Technology's top officials were taking part in a price-fixing scheme.

In its unanimous ruling handed down Thursday, the high court agreed with 4th District Judge Darla Williamson and said the shareholder, Scott Orrock, failed to first demand to Micron's board members fix the problem, which is required for a derivative lawsuit.

Barry Kaplan, the attorney who represents the board of the Boise-based major producer of computer chips, could not be immediately reached for comment Thursday. Neither could Marc Umeda, the attorney who represented Orrock in the case.

A derivative lawsuit allows shareholders to sue executives or board members over claims that their actions harmed the company as a whole. Orrock's lawsuit alleged that Micron President, Chairman and CEO Steven Appleton and several members of the board participated in a price-fixing scheme starting in 2000. He also claimed that the board failed to correct the behavior or hold anyone responsible for years.

During oral arguments last month, Kaplan argued that Orrock failed to show the board did not act in good faith. Kaplan also said the board fully cooperated with a U.S. Justice Department investigation into price-fixing allegations.

The Justice Department was investigating whether chip companies conspired to manipulate the number of DRAM chips released to market to inflate prices. Micron was granted immunity by the department, and the investigation resulted in fines of more than \$730 million and guilty pleas from four companies - [Samsung Electronics](#) Co., Elpida Memory Inc., Infineon Technologies AG and [Hynix Semiconductor](#) Inc.

Orrock's attorney, Marc Umeda, told the Supreme Court that Orrock should be exempt from the rule requiring that a demand first be made to the board because he knew such a demand would be futile. Orrock maintained that the board members knew or should have known that the price-fixing was occurring and that they chose not to investigate or try to stop it.

The high court sided with the board.

"Accepting all the facts alleged as true, Orrock insufficiently pled that demand on a majority of the Board at Micron would be futile," Justice Warren Jones wrote for the court. "There are insufficient facts which tend to show that a majority of other board members had knowledge of any DRAM price-fixing among DRAM manufacturers as reported in the news sources, that any of the board members consciously disregarded any of the 'red flags,' or that the board members failed to investigate or take remedial action."

Besides Appleton, six current and former board members were named in the lawsuit: James Bagley, Robert Lothrop, Gordon C. Smith, William P. Weber, Thomas T. Nicholson and Don J. Simplot. Wilber Stover Jr., Micron's former chief financial officer, and Michael Sadler, former vice president of worldwide sales, also were named as defendants.

Sadler is now the executive vice president of Inotera Memories Inc., a joint venture of Micron and Nanya Technology Corp. of Taiwan.

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