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# Overstock.com Naked Shorting Lawsuit Ends In A Whimper

Jan. 11, 2012 9:00 AM ETOverstock.com, Inc. (OSTK)



**Gary Weiss**  
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It's all over -- except for the legal bills.

Overstock.com's (NASDAQ:[OSTK](#)) five-year-old "naked shorting" lawsuit against Wall Street prime brokers came to a screeching halt on Tuesday, in a tersely worded, almost anticlimactic court ruling in California.

The ruling, which you can find [here](#), granted a summary judgment motion by Goldman Sachs ([GS](#)) and Merrill Lynch, the two surviving defendants.

I was actually surprised that this nutty hairball's worth of litigation was thrown out. Usually, investment banks settle nuisance suits like this long before they reach this point. But as [I pointed out](#) in an earlier article, Goldman seemed genuinely peeved by some of Overstock's hardball tactics in the suit.

In the end, Overstock was snared by what seems to have been a rookie mistake by the company's high-priced team of lawyers. The suit was filed for some reason in California, but evidently in five years, Overstock's ace legal team was unable to find any actual *stuff* taking place in the state.

Overstock president Jonathan Johnson [said in a press release](#) that the company will appeal, and will simultaneously head to New Jersey to pursue this absurd litigation. The suit contends that the company's stock has gone into the toilet because of nefarious market forces - and not because of the ineptness of the company's management team, headed by conspiracy theorist-CEO Patrick Byrne.

I wouldn't put much stock in an effort to drag this dog to the Garden State. It strikes me as forum shopping, which the courts usually don't much like (I think the legal term is "collateral estoppel"). Also, there may be statute of limitation issues. Not that any such things matter. I'm sure that Byrne will try to revive it for the peanut gallery, and will happily spend his shareholders' money to that end, so as to divert the attention from his driving the company to the [brink of bankruptcy](#).

But make no mistake - it's over except for the legal bills, which are likely to run into the millions, and damage to the company's reputation, which is substantial but less quantifiable. Two members of the board of directors [quit](#) in protest of this waste of corporate resources, not long after the suit was filed in early 2007. They were replaced by Byrne minions.


This is not a happy day in Utah, and more unhappy days are yet to come.

The loss of this suit means that the only litigation currently pending concerning Overstock is against the company, and none of it is looking too good. That includes a [consumer fraud lawsuit](#), brought by California law enforcement authorities in Oakland, and a [libel suit](#) against Byrne in California, in which a contempt order is sought against Byrne.

By the way, it's interesting how the company's stock weakened substantially shortly after 2 p.m. Eastern time, to close at a 52-week low. Was this related to the court ruling? I don't know, but I'm sure the Securities and Exchange Commission will want to find out, if it's not totally asleep.

**Disclosure:** I have no positions in any stocks mentioned, and no plans to initiate any positions within the next 72 hours.

This article was written by



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