
BARRACK BULLETIN

THE INSTITUTIONAL INVESTOR'S GUIDE TO SECURITIES CLASS ACTION LITIGATION

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Barrack, Rodos & Bacine

Samsonite Settles Securities "Baggage"

Institutional Leadership Resulted in Sweeping Corporate Therapeutics and Generous Cash Settlement

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Consumers have long associated the name Samsonite with luggage. For investors, between 1996 and 1998 Samsonite was a different sort of baggage. The Florida State Board of Administration ("FSBA") recently stepped forward for the class of those investors. FSBA retained Barrack, Rodos & Bacine, and as lead plaintiff prosecuted a lawsuit for securities laws violations that concluded favorably for both the class and Samsonite. FSBA's leadership in the Samsonite case demonstrates the beneficial impact of an institutional investor on the prosecution and resolution of securities class actions.

Case Background

In 1995, Samsonite was spun off from E-Romero II Holdings, Inc. ("E-II") which had been reorganized in bankruptcy in 1993. As a result, Samsonite was a public company but controlled by a group of former E-II bond holders and by Samsonite's Chairman and Chief Executive Officer, who collectively owned approximately 73% of Samsonite's outstanding common stock. Following the spin-off, Samsonite's business performed poorly, it was saddled with high interest rate debt, and by late 1995 its stock traded at depressed prices below \$11 per share.

The lawsuit alleged that controlling shareholders implemented a strategy to restructure Samsonite to create the impression that Samsonite was a successful "turnaround." A large secondary offering of Samsonite common stock was a critical element of the plan. This would enable the controlling shareholders to sell their 11 million Samsonite shares for a tremendous gain and would enable Samsonite to improve its financial condition by wiping out Samsonite's negative book value making it more attractive to an acquiring company. The linchpin to this plan was to convince the investment community that Samsonite had been revamped and restructured under a strong new management team and that Samsonite was uniquely positioned in the luggage industry to achieve strong, ongoing earnings growth.

First, the controlling shareholders announced that Samsonite had instituted price increases which would significantly boost Samsonite's results. They also claimed that Samsonite was enjoying very strong demand for its new product line and that its cost-cutting program was significantly reducing the Company's overhead. Then controlling shareholders forecasted Samsonite would achieve fiscal 1998 earnings per share of \$1.90-\$2.05, with gains in fiscal 1999 to over \$2.50.

Samsonite, however, was unable to hold to its price hikes and had to offer large discounts to its distributors to induce them to accept merchandise. From its rapid expansion of its retail outlets, Samsonite was increasingly competing with its distributors, causing many distributors to either cancel orders or to insist on special terms of sale, including the right to return unsold merchandise. The demand for Samsonite's new products was dismal, causing Samsonite to accumulate excess inventories. Samsonite was also encountering serious production problems at its Denver facility.

Rather than disclose the facts to investors, the lawsuit alleged that controlling shareholders continued to publicly represent that their cost-reduction programs and expansion of its retail outlets and product lines would lead to significant "top-line" revenue and earnings growth. As a result, Samsonite's stock doubled in one month, rocketing from \$20.25 on September 10, 1996 to \$40.75 on October 17, 1996, and continued climbing to \$45.75 by January 8, 1997. The controlling shareholders then quickly moved to conclude Samsonite's 8.6 million share secondary stock offering in February 1997 at \$42 per share. From its sale of over 3.1 million shares in the secondary offering, Samsonite

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received over \$132 million and certain of the controlling shareholders sold over 5.4 million shares of Samsonite stock for over \$229 million.

Throughout 1997, the controlling shareholders continued the drumbeat of positive news. By the fall of 1997, Samsonite stock reached its all-time high price of \$53-1/8 per share. Meanwhile, the lawsuit alleged that the Samsonite restructuring and turnaround was, in reality, an unmitigated failure, its business position was deteriorating, and it continued to ship large amounts of merchandise on a sale or return basis to artificially inflate its revenues and earnings -- resulting in misstated financial statements.

The controlling shareholders began to gradually "talk down" expectations during October and November 1997, by claiming that its disappointing 3rd quarter results would be impacted by a snowstorm in Denver. Samsonite then reported a substantial third quarter revenue shortfall. In response to the partial revelations of Samsonite's adverse financial condition, Samsonite's stock plunged to a low of \$25 per share. To halt the decline, Samsonite announced on January 7, 1998 that Goldman Sachs had been retained "to explore strategic alternatives designed to enhance stockholder value." Later that month, Samsonite announced initiatives designed to "further streamline and consolidate its North American operations" and said that it expected to realize annual savings of \$4.4 million pre-tax from these measures.

In March 1998, Samsonite announced that it would recapitalize the Company. In response, Samsonite's stock rebounded sharply. Samsonite announced in mid-May that it would buy back as much as 59% of its shares for \$40 each, a 33.8% premium to its then-current stock price (the "Self Tender") and would pay for the \$700 million recapitalization by borrowing from banks and selling subordinated notes and preferred stock. On June 24, 1998, Samsonite announced that it had accepted for payment 10.5 million shares of its common stock, or approximately 50% of its outstanding shares, in the Self-Tender. The Self-Tender increased the company's debt by \$300 million, and reduced shareholder equity from a positive \$208 million to a negative \$220 million. *According to one portfolio manager, the plan would mostly benefit the controlling shareholders, who collected approximately \$160 million in exchange for their pro rata portion of shares.*

That lawsuit alleged that just over six weeks after the controlling shareholders cashed out, Samsonite announced that it would report a loss of between \$11 and \$13 million for the second quarter of fiscal 1998. The loss included \$9.1 million in expenses for "repricing" options held by the controlling shareholders and others that were "out of the money." Significantly, the Company also attributed the loss to "poorer than expected performance in the U.S. wholesale business," weak demand for its products and excess inventory levels at the retail level.

Samsonite's stock price fell another 16%, reaching its 52-week low and closing at \$5.75 per share on volume of 1.6

million shares. Although investors lost millions, the lawsuit alleged that the controlling shareholders did not.

Florida's Role as Lead Plaintiff

The Florida State Board of Administration ("FSBA") provides retirement and health benefits to over 700,000 state and local public employees, retirees and their families, for more than 800 employers. The funds under management by FSBA presently exceed \$100 billion. Like virtually all large institutional investors, the FSBA's investment portfolio includes positions in a multitude of publicly traded companies. FSBA, therefore, believes it has a vested interest in ensuring that the public companies in which it invests are well-managed, protective of shareholder rights and responsive to shareholder concerns.

The FSBA purchased shares of Samsonite stock in 1997 and sustained losses on those purchases that exceeded \$1.9 million. FSBA retained Barrack, Rodos & Bacine to investigate and initiate an action against Samsonite and moved to be appointed Lead Plaintiff under the provisions of the Private Securities Litigation Reform Act of 1995 (PSLRA). The court ultimately appointed FSBA as Lead Plaintiff and approved FSBA's selection of BRB as Co-Lead Counsel. The FSBA through Co-Lead Counsel ultimately secured an excellent settlement that includes both cash and corporate therapeutics. The settlement was approved by the U.S.D.C. of Colorado on July 25, 2000.

"The \$24 million settlement represents a damage recovery of 43 cents on the dollar, significantly higher than the average amount of similar cases."

A preliminary analysis indicated that the damages suffered by the members of the class were approximately \$56 million. The case settled for \$24 million in cash. Tom Herndon, director of the FSBA, expressed FSBA's approval of the cash component of the Samsonite in this way: "The \$24 million settlement represents a damage recovery of 43 cents on the dollar, significantly higher than the average amount of similar cases."

The settlement also provides that Samsonite will adopt a wide ranging, comprehensive corporate governance program designed to prevent a reoccurrence of the harm. Specifically:

- *At least two-thirds of the members of the Board shall be "independent," that is financially independent of Samsonite, its senior management, and any employee directors.*
- *The Board shall hold an executive session at least once each year at which employee directors are not present.*
- *The Audit Committee and the Compensation Committee of the Board of Directors shall each be composed entirely of independent directors.*
- *The Audit Committee will meet quarterly to review the*

Company's financial statements prior to public release and will meet at least annually to review Samsonite's revenue recognition and reserve policies and management's implementation of these policies. The Audit Committee will bring to the Board's attention any material deviation from these policies.

- The Compensation Committee shall set annual and long-term performance goals for the Chairman of the Board and the Chief Executive Officer and evaluate his performance against such goals and the performance of Samsonite's peer companies.
- The Board of Directors shall adopt compensation principles that:
 - emphasize pay for performance and encourage retention of those employees who enhance Samsonite's performance;
 - promote ownership of Samsonite stock to further align the interests of directors, management and stockholders;
 - maintain an appropriate balance between base salary and long-term and annual incentive compensation;
 - consider the recent compensation history of the executive, including special or unusual compensation payments; and
 - link the payment cash incentive compensation plan bonuses for senior executives to achievement of financial goals set in advance by the Compensation Committee.
- The Board's Committees shall have standing authorization to retain legal or other advisers of their choice, which advisers shall report directly to the Committee.
- The Board of Directors shall create the Corporate Governance Committee, which Committee shall be comprised entirely of independent directors and
 - be responsible for periodic review and interpretation of Samsonite's Corporation Governance Policies, as well as consideration of other corporate governance issues that may merit consideration by the entire Board;
 - advise the Chairman of the Board as to an appropriate schedule of Board meetings, seeking to ensure that the independent directors can perform their duties responsibly while not interfering with Samsonite's operations;
 - provide the Chairman of the Board with input as to the preparation of the agendas for the Board and Committee meetings;
 - advise the Chairman of the Board as to the quality, quantity and timeliness of the flow of information from Samsonite's management that is necessary for the independent directors to effectively and responsibly perform their duties; and
 - coordinate, develop the agenda for, and moderate executive sessions of, the Board's independent directors, and act as principal liaison between the independent directors and the Chairman of the Board on sensitive issues.
- Any future significant recapitalization or acquisition will require the approval of an independent committee of the Board, which committee may obtain an independent fairness opinion prior to recommending approval of any such transaction to the Board.

Once adopted, these therapeutics will empower the Board to oversee the management of Samsonite with greater independence. These changes will also enable the Board and senior management to manage Samsonite's business with greater accountability in the best interests of Samsonite's shareholders.

As Herndon observed: "The corporate governance reforms are significant and material to the future performance of the company. Most notable among the governance reforms are a required 2/3 majority of independent directors, annual non-employee director executive sessions and the creation of a Corporate Governance Committee composed entirely of independent directors. These corporate therapeutics are a substantial benefit to Samsonite shareholders and will advance the principles of good governance that the FSBA seeks to foster."

"As the Samsonite suit demonstrates, we will continue to pursue governance reforms as part of a larger class-action litigation strategy when such corporate governance deficiencies exist."

Only the presence of an institution as lead plaintiff ensures that a thorough comprehensive corporate governance program is adopted by the company at the conclusion of these lawsuits. Herndon reflects FSBA's commitment to corporate governance reform: "As the Samsonite suit demonstrates, we will continue to pursue governance reforms as part of a larger class-action litigation strategy when such corporate governance deficiencies exist." The FSBA has, in fact, been one of the most active institutional leaders in this area. ❖

"HOT" LEAD PLAINTIFF MOTION DEADLINES

<u>Company and Period</u>	<u>Motion Deadline</u>
Honeywell, Int'l. ("HON") 12/20/99 – 6/19/00	9/22/00
Unify Corp. ("UNFY") 5/19/99 – 7/28/00	9/29/00
Mercator Software, Inc. ("MCTR") 4/20/00 – 8/21/00	10/23/00
Thomas & Betts Corp. ("TNB") 9/1/99 – 6/19/00	10/27/00

Institutions which have made significant transactions during the applicable periods should contact Sara Jones Biden or Maxine Goldman for a complimentary analysis of the fund's loss at 1-800-417-7305 or mgoldman@barrack.com. ❖

UPCOMING CLAIM DEADLINES

<u>Company/Class Period</u>	<u>Due Date</u>
Inso Corporation 4/23/98 – 3/31/99	9/14/00
General Electric (Kidder Peabody Sec. Lit) 2/26/93 – 4/15/94	9/15/00
St. John Knits 12/9/998 – 7/7/99	9/18/00
Home Health Corp. 9/3/97 – 1/29/99	9/21/00
Powerwave Technologies 6/4/97 – 1/16/98	9/25/00
EFTC Corp. 4/6/98 – 8/20/98	9/26/00
Nextel 7/29/93 – 1/10/95	9/28/00
Gametech International, Inc. 11/25/97 – 1/8/98	10/9/00
Ascend Communications 11/5/96 – 9/30/97	10/16/00
Adac Laboratories 1/10/96 – 8/18/99	10/24/00
Einstein Noah Bagel Corp. 8/2/96 – 10/29/97	10/27/00
California Amplifier, Inc. 9/12/95 – 8/8/96	10/31/00
Spectrian Corp. 7/17/97 – 10/23/97	11/6/00
Sybase Inc. II 4/17/97 – 1/21/98	11/6/00
Total Renal Care 3/11/97 – 7/18/99	11/9/00
Manugistics Group, Inc. 2/24/98 – 5/22/98	11/10/00
STB Systems, Inc. 8/25/97 – 5/1/98	11/14/00
Videolan Technologies 11/7/95 – 11/14/96	11/27/00
Tee-Com Electronics 10/18/95 – 5/27/97	11/27/00
Fine Host Corporation 6/19/96 – 12/12/97	11/27/00
Material Sciences 4/18/96 – 4/6/97	11/29/00
Gandalf Technologies, Inc. 11/6/95 – 7/2/96	11/30/00
Palomar Medical Technologies 2/1/96 – 3/26/97	12/1/00
PennCorp Financial Group, Inc. 2/8/96 – 11/16/98	12/7/00
2Connect Express, Inc. 5/9/97 – 1/12/98	12/10/00
Questions? Contact Maxine Goldman at 1 (800) 417-7305 or mgoldman@barrack.com. ❖	

CENDANT SETTLEMENT APPROVED

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Barrack, Rodos & Bacine

On August 15, 2000, Judge William H. Walls granted final approval to the record settlements in the Cendant securities litigation. The case, in which Barrack, Rodos & Bacine served as one of the two Lead Counsel, stemmed from the merger of HFS Incorporated and CUC International, Inc., which combined to form Cendant.

The New York State Common Retirement Fund, CalPERS and the New York City Pension Funds joined together in June 1998 to lead the litigation. The settlement with Cendant provides for an all-cash payment of \$2.83 billion for the benefit of the Class, plus interest that will begin accruing on August 20, 2000. Judge Walls noted that the Class will be receiving an immediate all-cash settlement, and that none of the settlement fund is subject to any reversion to the defendants.

The Cendant settlement includes two other important features. First, the Class is entitled to receive one-half of any net recovery obtained by Cendant and the individual settling defendants in their lawsuits against Ernst & Young, which are continuing. Second, Cendant is required to institute corporate governance changes that are far-reaching.

The Court also approved the \$335 million settlement with the accounting firm, Ernst & Young by far the largest amount ever paid by an accounting firm in a securities class action case. This brings the total settlement amount to \$3.165 billion and is more than four times larger than any securities class action settlement in history.

The District Court also extended the time for Class Members to file claim forms until October 31, 2000. Persons with inquiries concerning the submission of claim forms, may contact Jeff Golan at Barrack, Rodos & Bacine's toll free number -- (215) 963-0600. ❖

About the Publisher...

Barrack, Rodos & Bacine is a boutique law firm that has been extensively involved in class and derivative actions alleging violations of securities laws for nearly twenty-five years. The firm, with attorneys in offices located in Philadelphia, San Diego, New York, New Jersey and Boston, has been appointed by federal judges throughout the country as lead counsel in over 30 cases since the passage of the PSLRA and represents a number of institutional investors in securities class actions.

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