BARRACK BULLETIN

THE INSTITUTIONAL INVESTOR'S GUIDE TO SECURITIES CLASS ACTION LITIGATION

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3COM Corporation Agrees To Pay $259 Million To Injured Investors

Edward M. Gergosian, Esquire
Partner, Barrack, Rodos & Bacine

3Com Corporation (NASDAQ: COMS) has agreed to pay $259 million to settle the class action lawsuits that had been brought against it in the wake of its disastrous acquisition of U.S. Robotics in 1997. This remarkable cash settlement, one of the largest ever obtained from a corporate defendant in a securities class action, was achieved by four lead plaintiffs, including two individuals and two institutions, public pension funds. Barrack, Rodos & Bacine acted as a co-lead counsel for the lead plaintiffs and the class. The deadline for filing a claim in order to participate in the distribution of the settlement fund is March 5, 2001.

The claims against 3Com arose as a result of the company's attempt to revive flagging investor interest in early 1997 due to its decreasing market share for its core products. At the time, 3Com was in the business of developing, manufacturing and selling computer network products, but was losing market share to a larger competitor. 3Com negotiated and publicly announced in February 1997 the proposed acquisition of U.S. Robotics ("USR"), a modem manufacturer, claiming that the

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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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Institutions Have Much To Gain By Taking The Lead In Securities Class Actions: Florida's Story

Guest Editorial: Horace Schow II, Esquire
General Counsel, Florida State Board of Administration

The Florida State Board of Administration ("FSBA") is among a handful of institutional investors which have actively and aggressively pursued leadership of securities class action cases. Not only has the FSBA's increased participation greatly benefited our own beneficiaries, our efforts have increased recoveries for the entire class of more passive investors, among them other institutions.

Like all pension funds we at the FSBA take the return on the FSBA's investments very seriously. We believe participation in securities litigation is an important part of our strategy to increase the return on the FSBA's investments. Our goals in securities litigation are twofold: 1) to receive a better settlement than can be achieved by remaining passive; 2) to implement corporate therapeutics to increase the long term health of the company in which we have invested whenever possible. As a long term investor, we see the implementation of both goals as increasing the FSBA's long term bottom line. Ultimately, the market, in general, and other investors benefit. Apparently, this is what Congress had in mind when it favored institutional lead plaintiffs in the Private Securities Litigation Reform Act (PSLRA) , [H.R. Conf. Report Dep. 104 – 369, p. 32 – 35]. From the FSBA's vantage point as a *very* active participant – institutional leadership works.

As a result of its investments, the FSBA is a potential claimant in nearly 400 securities cases. While this number is probably higher than most, virtually all institutional investors are potential claimants in a substantial number of cases – whether or not they play an active role. We have been active, to some degree, in just over 20 securities cases. We are currently Lead Plaintiff in five active cases and are pursuing lead positions in more. There are conflicting interpretations of "professional plaintiff" provisions of the PSLRA, which limit the number of times an "individual" can act as Lead Plaintiff to five in three

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Florida's Story
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years. We realize that we may be approaching our current limit for leadership in class cases. As a result, we have filed a number of individual claims. Frankly, we wish we could take the lead in more class cases.

"Simply put, if a public pension fund wants a say in settlement, it can only assure this by becoming a lead plaintiff."

One important aspect of our active program is our ability to enter into class action litigation without prior approval of our Trustees. We were granted that authority in 1991. We notify the Trustees of the action after the fact. Before 1991, it was time-consuming to obtain the signatures of the Governor, Treasurer and Comptroller (each of our elected official trustees) to authorize the FSBA to pursue a motion to become lead plaintiff in securities actions. Due to the unique nature of securities class action litigation – where each investor, including our fund, was automatically a passive plaintiff without a say in the prosecution – we believed we could have a greater say – and a greater impact – if we could quickly enter a case by bypassing the prior approval requirements. The FSBA is still required to obtain uniform concurrence of all trustees prior to becoming a plaintiff in other types of litigation.

Implementing a streamlined approval process is even more important now because of the relatively narrow 60-day time frame imposed by the PSLRA for notification of a class action and the deadline for filing a motion to become lead plaintiff. By the time enough information is gathered to determine whether participation is appropriate (evaluation of claims and transactions to determine loss), there is often not enough time to step through all of the administrative hurdles needed to obtain approval to file litigation on behalf of a pension board. I recommend that other state funds take steps to obtain the authority to decide expeditiously whether to approve motions to become lead plaintiff in securities class actions where they have a significant loss.

We have had considerable success in certain of our class action suits with the help of reputable and dependable firms which, over the course of time, have great familiarity with the workings of the FSBA. We have found that it has been well worth the effort to achieve these successes. Simply put, if a public pension fund wants a say in settlement, it can only assure this by becoming a lead plaintiff.

For example, in the securities litigation against Samsonite, the FSBA was represented by Barrack, Rodos & Bacine, and achieved a recovery for the FSBA and the class of $.43 per dollar of damage sustained. This compares to the oft-quoted typical recovery of 14 cents per dollar of loss. We also achieved significant corporate governance improvements in Samsonite, designed to help the company become more "healthy" in the long run – which will improve our return on our long term investments.

In addition, we have sought and received reimbursement for our administrative costs (including lost wages) in successful cases, as provided under the PSLRA. [H.R. Conf. Rep. 104 – 369, p. 32 – 35]. I think reimbursement for these costs and "lost" time goes a long way toward addressing concerns raised by other institutional administrators in considering a leading role in this type of action. I would encourage other institutions considering active participation to note this to their boards. While on the whole, the time and expense of participation is not particularly onerous, reimbursement is an added boon that lead plaintiffs are entitled to.

As a final note to other institutions: there have been several conflicting federal district court decisions as to whether an institutional plaintiff can serve as lead plaintiff in more than five securities class actions within a three year period. Some district courts have ruled yes – others have ruled no. Recently, the SBA achieved a favorable decision in the Sykes securities litigation which held that this restriction does not apply to institutions. So far no court of appeals has heard the issue. It is our hope that this matter will be put to rest shortly. In the meantime it is clear that all investors – and especially institutions such as ours – would all benefit if more institutions would take steps to participate as lead plaintiff in these actions. ❖

ABOUT THE FSBA

The FSBA was created by the Constitution of the State of Florida. Contrary to its name, the FSBA actually does no "administration" – rather, it invests over $121 billion in assets on behalf of the Florida Retirement System and a myriad of other state and local funds, including minor funds such as the Hurricane Catastrophe Trust Fund and the Department of Lottery. The FSBA receives no operating funds from the State of Florida. We are not state employees. Rather, all of its budget comes from earnings on investments. The FSBA's beneficiaries include approximately 800,000 state and local government employees -- including over 600,000 active members, and 170,000 retirees. ❖

Horace Schow, II
General Counsel
Florida State Board of Administration

CALIFORNIA COURT CLOSES MAJOR LOOPHOLE IN STATE SECURITIES LAWS

Stephen R. Basser, Esquire

Partner, Barrack, Rodos & Bacine

In a potentially major shift in the interpretation of California law, a Superior Court judge located in the heart of Silicon Valley has closed a serious loophole in the state's securities laws. Judge Conrad L. Rushing, of the Santa Clara County Superior Court, upheld a complaint against Silicon Graphics, Inc. (NYSE: SGI) and a number of its executives for violations of the sections of the California Corporations Code dealing with securities fraud, even though not all of the defendants had both sold stock and made false statements during the period covered by the complaint. This holding finally closed the loophole in the interpretation of the California securities laws which allowed a defendant to avoid liability for false and misleading statements, if that defendant did not sell the securities of the company about which the statements were made. Barrack, Rodos & Bacine is co-lead counsel for plaintiffs and the class in this state court action and Stephen R. Basser, a partner in Barrack, Rodos & Bacine's San Diego office, argued this case before the court.

This action arose out of Silicon Graphics' desperate mid-1997 attempt to resuscitate its sagging business, avert a looming liquidity crisis and counteract the effects of an impending expose' by *Business Week*, which promised to contribute to the downward pressure on SGI's stock price. The liquidity crisis was anticipated as a result of a "put" provision contained in $200 million of SGI's outstanding zero coupon bonds. This provision required SGI to repurchase the bonds for $245 million in November 1998 if SGI's stock were not then selling at $33 per share. Such stellar stock performance seemed unlikely in the summer of 1997, since during the first six months of the year, SGI's stock had drifted down from the mid to upper $20s to the low to mid-teens by mid-July. By then, SGI had failed to meet the market's expectations for seven consecutive quarters. Thus, in the summer of 1997, the defendants initiated a campaign to drive up SGI's stock price to facilitate the exchange of new SGI convertible securities for the zero coupon bonds and eliminate the dreaded "put" provision.

On the opening day of the class period, July 24, 1997, SGI announced spectacular results for its fourth quarter of fiscal 1997 (ending June 30, 1997), which it attributed to strong demand for its products, a successful product transition and the excellence of its management team. These "spectacular" results followed SGI's disappointing results in the preceding seven consecutive quarters. Of course, the real cause of these extraordinarily positive results was not a turn around in SGI's fortunes, but rather SGI's concerted dumping of its products on its customers through deep price discounts, extremely generous extended payment terms and return rights. These "extraordinary" results boosted SGI's stock price (it jumped nearly $5 per share as a result of the announcement) and blunted (if not totally negated) the effects of the *Business Week* expose'.

In the wake of SGI's "reversal of fortune," the Company offered to exchange the $200 million in outstanding zero coupon bonds for a new SGI convertible security *without the put feature*, thus ending the potential liquidity crisis. As an added benefit of the scheme, SGI's top management received incentive bonuses for the first time in two years. Four of the six individual defendants in the action sold 100% of the SGI shares they acquired by incentive bonus option exercise during the class period for a total of $7.4 million in illegal insider trading proceeds. The other two, CEO Edward McCracken and CFO William Kelly, did not sell any SGI stock during the class period, but did make many false and misleading statements about SGI to the investment community.

Because of the manipulation of SGI's customer base to obtain the "extraordinary" results for the fourth quarter of 1997, SGI's results for the first quarter of 1998 (ending September 30, 1998) sunk back into the familiar lackluster performance exhibited by the company during the previous two years. Indeed, when SGI announced on October 6, 1997, that it had suffered a $36 million loss, its largest quarterly loss in the company's history because of a huge revenue shortfall, SGI's stock immediately collapsed by 36%. This action followed.

After this action was filed, alleging that SGI and the individual defendants had violated the anti-fraud provisions of the California Corporations Code, sections 25400 and 25500, the defendants sought to have the complaint dismissed. The court, in accordance with the long-standing interpretation of the California securities laws, upheld the complaint against SGI and four of the individual defendants because the complaint had alleged that they had sold SGI securities during the Class Period and made false and misleading statements about SGI. There was nothing novel in that ruling.

McCracken and Kelly -- the non-selling defendants -- had argued, and previous California court rulings had held, that in order to be held liable under sections 25400 and 25500 of the California Corporations Code, a defendant had to make a false or misleading statement <u>and</u> sell (or offer to sell) the stock of the company in question. Section 25400(d) prohibits the making of false or misleading statements by anyone selling (or offering to sell) a security. Section 25500 extends civil liability to anyone "who willfully participates in any act or transaction in violation of Section 25400." Previous court decisions had restricted liability to individuals who had both made false statements <u>and</u> sold securities.

Judge Rushing interpreted Section 25500 as extending liability to "willful participants" in a false and misleading

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3COM Settles for $259 million
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combined company would be a leader in providing internet connectivity solutions. However, the market reacted negatively to the proposed merger, threatening 3Com's ability to gain shareholder approval of the acquisition.

On April 23, 1997, USR announced record financial results for its quarter ended March 30, 1997, and reported "smashing" demand for its new 56 kilobits-per-second modem. The market's view of the merger brightened, and shortly thereafter, on May 9, 1997, USR and 3Com included USR's results for its March quarter in the proxy statement (distributed broadly to the market) soliciting shareholder approval for the merger. On June 11, 1997, as 3Com's stock rose to $48 per share, the companies received their shareholders' approval for the merger, and USR became part of 3Com. Thereafter, senior officers of 3Com and USR began selling more than $200 million of 3Com stock.

This remarkable cash settlement, one of the largest ever obtained from a corporate defendant in a securities class action, was achieved by four lead plaintiffs, including two institutions….

Plaintiffs alleged that USR's results for its quarter ended March 30, 1997, were false and materially overstated. Within weeks after USR closed it books for the quarter, distributors returned hundreds of millions of dollars of modems to USR. During April and May 1997, USR suffered a net loss of $160.3 million, although this loss was hidden from investors (through a realignment of USR's fiscal year to coincide with 3Com's fiscal year) in order to gain approval of the merger. USR and 3Com also failed to include the disastrous 2 months in the combined results for the company after the merger.

In October 1997, five months after USR reported "record" results for its March quarter and "smashing" demand for its 56K modem, newspaper reports in *The San Francisco Chronicle* and *The New York Times* revealed that defendants had hidden USR's loss of $160.3 million for the two months (April and May) following the March quarter and preceding the merger, as well as a disastrous drop in demand for USR's 56K modem. It was not until November 5, 1997, that defendants stunned investors by admitting that they had stuffed USR's modem distribution channels prior to the merger. On March 19, 1998, in connection with an SEC investigation, 3Com took the extraordinary step of restating the previously reported *pro forma* combined results of the companies to include the $160.3 million April - May 1997 loss. For the combined companies, net income was reduced by almost ***$100 million or 16 percent***. USR's poor revenues and the $160.3 million loss entirely wiped out USR's reported profits for both its December 1996 and its March 1997 quarters.

In these class actions filed in the United States District Court for the Northern District of California, and brought on behalf of all purchasers of 3Com common stock from April 23, 1997 through November 5, 1997, plaintiffs allege that USR's results for its quarter ended March 30, 1997 were false, were inflated by material amounts, and violated generally accepted accounting principles. Plaintiffs further allege that defendants' false statements artificially inflated the price of 3Com stock, and that the Individual Defendants and other insiders took advantage of this inflation by selling more than four million shares of their own 3Com stock for more than $200 million. The federal court appointed Barrack, Rodos & Bacine as one of the co-lead counsel for the class in *In re 3Com Securities Litigation*. Subsequently Barrack, Rodos & Bacine also filed claims on behalf of the class in California Superior Court asserting that defendants' conduct violated California's securities laws.

Following three years of vigorous prosecution of this action by plaintiffs' co-lead counsel, in late 2000 the parties reached an agreement in principle to settle the case for $259 million in cash. The settlement has been funded by the company and the funds are being held in escrow for the benefit of the class. The Court will hear the parties motion for final approval of the settlement on February 23, 2001. Class members must file their claims to participate in the settlement no later than March 5, 2001. If you need a claim form or have questions about the settlement, please contact Leslie Molder, Esquire of Barrack, Rodos & Bacine at (215) 963-0600. ❖

California Loophole Closed
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statement by a seller of securities, even if that willful participant did not sell the security himself. In making his decision, Judge Rushing looked to a 1999 California Supreme Court case which stated (but did not decide) that the unlawful conduct proscribed by section 25400(d) was not a stock sale, but the making of false and misleading statements. Thus, based on the interpretation of the California statute by the California Supreme Court, the court upheld the complaint against SGI's CEO and CFO because even though they had not sold any SGI stock during the Class Period, they had willfully participated in the making of false and misleading statements by SGI and others who did sell SGI securities during the class period.

As a result of this landmark decision, those in business who willfully participate in the making of false and misleading statements about a company or its securities will no longer be able to evade liability simply because they did not personally sell any securities. Thus, a major loophole for fraud in California's securities laws has been closed. ❖

UPCOMING CLAIM DEADLINES

Barrack, Rodos & Bacine prepares a list of upcoming deadlines for institutional use in filing claim forms in securities class actions which have already concluded. Often large portions of settlement funds set aside in these cases are not distributed because a number of class members fail to file a timely claim form. BRB urges institutions to forward this list to their custodians to ensure all monies to which members are entitled are collected.

Company/Class Period/Cusip No.	Due Date
3Com Corporation COMS 4/23/97 – 11/5/97 885535104	3/5/01
Sirena Apparel Group, Inc. SIRN 11/12/98 – 6/7/99 82966Q102	3/8/01
Plains Resources, Inc. PLX 10/29/98 – 11/26/99 726540503	3/9/01
Sotheby's Holdings, Inc. BID 2/11/97 – 2/18/00 835898107	3/10/01
Correction Corp. of America CWX **Formerly Prison Realty Trust, Inc.** 4/24/97 – 4/20/98 22025Y100	3/12/01
Number Nine Visual Tech. Corp. NINE 5/26/95 – 1/31/96 67052W105	3/14/01
Rite Aid Corporation RAD 4/1/96 – 9/8/96 767754104	3/15/01
DII Group, Inc. DIIG 4/1/96 – 9/8/96 232949107	3/19/01
Plains All American Pipeline PAA 11/17/98 – 11/26/99 726503105	3/19/01
Navigant Consulting, Inc. NCI 2/26/93 – 4/15/94 63935N107	3/22/01

Company/Class Period/Cusip	Due Date
Southern Pacific Funding Corp. SFCFQ 10/9/97 – 10/01/98 843576109	3/28/01
PLC Systems, Inc. PLC 8/15/96 – 7/25/97 69341D104	3/29/01
NextLevel Systems, Inc. NLV 7/25/97 – 10/15/97 652907106	3/30/01
Foamex Int'l., Inc. FMXI 5/7/98 – 4/16/99 344123104	4/11/01
Sumitomo Bank of California SUMI All persons who held the common stock at close of trading on 3/25/98 865593107	4/13/01
Sonus Pharmceuticals, Inc. SNUS 9/24/96 – 6/8/98 835692104	4/19/01
MedNet, MPC Corp. MMRX 8/1/95 – 3/10/97 58501B107	5/1/01
Microstrategy, Inc. MSTR 6/11/98 – 3/20/00 594972101	5/2/01
FLIR Systems, Inc. FLIR 3/3/99 – 3/6/00 302445101	5/3/01
Petco Animal Supplies, Inc. PETC 1/30/97 – 7/10/98 716016100	5/7/01
Citizens Utilities Co. CZN/A 5/7/96 – 8/7/97 177342102	5/10/01
Danka Business Systems DANKY 5/13/97 – 12/15/97 236277109	6/8/01

Questions? Contact Maxine Goldman at 1 (800) 417-7305 or mgoldman@barrack.com. ❖

"HOT" LEAD PLAINTIFF MOTION DEADLINES

Company & Period	***Motion Deadline***

NEW ERA OF NETWORKS *(NASDAQ: NEON)* — *March 5, 2001*
Class Period: October18, 2000 to November 21, 2000

New Era of Networks, Inc., a leading provider of e-business enabling software and services, falsely reported "record" revenues for the third quarter ended September 30, 2000. Nearly 20% of these "record" revenues were based on non-cash transactions, including equity investments and/or bartered "professional services." Without those transactions, the company would not have met its revenue targets.

BRIDGESTONE CORP. *(NASDAQ: BRDCF/BRDCY)* — *March 6, 2001*
Class Period: March 31, 1998 to August 31, 2000

Bridgestone Corp., and its U.S. subsidiary, Bridgestone/Firestone, had knowledge of thousands of claims for and complaints concerning failures of its ATX tires, but made false and misleading statements about the effectiveness and integrity of its product design, testing and manufacturing processes and the quality and safety of its products.

CRITICAL PATH, INC. *(NASDAQ: CPTH)* — *April 6, 2001*
January 1, 2000 to present

Critical Path, Inc., a provider of e-mail hosting services to a variety of organizations, knew that it would not meet its projected fourth quarter results because new accounting regulations would negate the Company's ability to continue to recognize up front license fees in that quarter.

NICE SYSTEMS, INC. *(NASDAQ: NICE)* — *April 16, 2001*
February 26, 2000 to February 7, 2001

Nice Systems, Inc., a global provider of integrated digital recording and quality management solutions, has admitted that its financial statements for 1999 and the first three quarters of 2000 misstated revenues and earnings by improperly recognizing consignment sales as revenues.

SCHERING-PLOUGH CORP. *(NSYE: SGP)* — *April 17, 2001*
April 1, 2000 to February 15, 2001

Schering Plough Corp., a drug manufacturer, recently admitted that it has experienced widespread manufacturing difficulties at certain of its plants and there is a significant risk that the FDA will force the Company to curtail its operations at facilities. As a result of these difficulties, the Company anticipates reduced sales significantly lower first quarter 2001 earnings.

NORTEL NETWORKS CORP. *(NYSE, TSE: NT)* — *April 17, 2001*
November 1, 2000 to present

Nortel Networks Corp., a Canadian telecom equipment manufacturer, falsely boasted that its "global reach and industry leading portfolio" would allow it to "continue to outpace the market and gain market share" even in the fact of the "tightening of capital within the telecom sector." On February 15, 2001, Nortel announced that it expected to experience a loss for the first quarter of 2001 and that it anticipated severely diminished revenue and earnings growth for the year.

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