

Gary Silberberg v. Acacia Communications, Inc.

COURT: United States District Court for the District of Massachusetts
CASE NUMBER: 2018-0262
CASE LEADERS: Mark Lebovitch

Acacia Communications, Inc. (“Acacia” or the “Company”) held its initial public offering (“IPO”) in May 2016. In connection with the IPO, certain Company insiders and investors, representing a majority of the Company’s Board of Directors and a majority of Acacia’s outstanding shares, entered into agreements that prohibited them from selling Acacia common stock until November 8, 2016 (the “Lock-Up Agreements”). Nonetheless, these stockholders were granted partial early releases from these Lock-Up Agreements and sold hundreds of millions of dollars worth of shares in a secondary offering held on October 7, 2016. On October 27, 2016, Acacia’s two largest customers issued earnings releases and forward guidance that were lower than market expectations. As a result, Acacia’s stock price dropped over 15%.

BLB&G represented Acacia stockholder Gary Silberberg, who made a demand to inspect certain of the Company’s books and records to determine whether the Company’s officers and directors breached their fiduciary duties by permitting an early release from the Lock-Up Agreements and selling Company shares while in possession of material non-public information. On April 9, 2018, Plaintiff Silberberg filed a complaint in the Court of Chancery of the State of Delaware to compel Acacia to produce the requested books and records without an overly restrictive confidentiality agreement. The Court issued a final ruling and order in Plaintiff Silberberg’s favor on June 1, 2018 and Acacia produced over 1,000 documents to Plaintiff Silberberg.

Thereafter, Plaintiff Silberberg joined other Acacia stockholders that had filed complaints in the United States District Court for the District of Massachusetts alleging, among other things, that Acacia’s directors and officers breached their fiduciary duties in negotiating a settlement of the outstanding claims. The parties engaged in a mediation on July 16, 2018 where they reached a settlement that improves Acacia’s relevant corporate governance, including by creating a new Trading Compliance Committee, enhancing Board oversight of insider trading, and adding a new independent director to the Board. On September 14, 2018, the parties finalized the settlement by entering into a formal Stipulation and Agreement of Settlement, Compromise and Release. On September 18, 2018, the United States District Court for the District of Massachusetts preliminarily approved the Settlement. A hearing where the Court will determine whether to grant final approval of the Settlement is scheduled for December 19, 2018 at 2PM.

Case Documents

- October 5, 2018 - Notice of Pendency of Derivative Actions, Proposed Settlement of Derivative Actions, Settlement Hearing, and Right to Appear
- September 17, 2018 - Order Preliminarily Approving Stockholder Derivative Settlement and Providing for Notice of Settlement
- September 14, 2018 - Stipulation and Agreement of Settlement, Compromise and Release

- April 9, 2018 - Verified Complaint Pursuant to 8 Del. C. § 220 to Compel Inspection of Books and Records