In re Apollo Group, Inc. Shareholder Derivative Litigation

COURT: United States District Court for the District of Arizona
CASE NUMBER: 06-cv-02124
CLASS PERIOD: 1998 - 2001

Shareholder derivative action filed on behalf of Louisiana Municipal Police Employees' Retirement System ("Plaintiff") for the benefit of Nominal Defendant Apollo Group, Inc. ("Apollo"), against certain current and former executive officers and directors of Apollo. This action arises from defendants' obtaining, approving or acquiescing to the backdating of stock option grants in violation of their fiduciary duties and other laws from 1998 through 2001 (the "Relevant Period"), causing damage to Apollo.

SETTLEMENT OF DERIVATIVE ACTION APPROVED BY THE COURT:

After extensive settlement negotiations and mediation before a retired federal judge, the parties filed a stipulation of settlement on April 7, 2008. The terms of the settlement include corporate governance reforms and the repricing of outstanding stock options, thereby bestowing a direct benefit to Apollo. On August 21, 2008, the Court held a hearing to consider for final approval the terms of the Stipulation of Settlement and entered an order approving the settlement.

BACKGROUND:

On September 19, 2006, Plaintiffs filed a Derivative Complaint against certain current and former executive officers and directors of Apollo, including John G. Sperling, Brian E. Mueller, Peter V. Sperling, Kenda B. Gonzales, Todd S. Nelson, Daniel E. Bachus, Laura Palmer None, Anthony F. Digiovanni, J. Jorge Klor de Alva, Jerry F. Noble, John Blair, Dino J. DeConcini, Hedy F. Govenar, John R. Norton, III, and Thomas C. Weir.

Plaintiff alleges violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5; breach of fiduciary duty; unjust enrichment, enjoining of ultra vires acts, accounting, abuse of control; gross mismanagement; constructive fraud; waste of corporate assets; violation of Section 20A of the Securities Exchange Act; and breach of fiduciary duties for insider selling and rescission of all stock option contracts between the officer defendants and Apollo entered into during the Relevant Period.

Two other related actions were also filed in the Arizona District Court. On November 3, 2006, Apollo moved to consolidate the actions and also moved to stay proceedings until completion of the investigation by a Special Committee. Plaintiff opposed Apollo's Motion to Stay and also requested that the court consolidate the pending actions and appoint Louisiana Municipal Employees' Retirement System as the lead plaintiff. On December 4, 2006, the Court issued an order indicating that it would grant Apollo its requested stay, provided Apollo replaces a particular member of its Special Committee of the Board of Directors. In response, on December 14, 2006, Apollo replaced director defendant Hedy Govenar with non-defendant K. Sue Redman on the Special Committee. On January 8, 2007, the Court consolidated the three actions and stayed the action temporarily until February 9, 2007.

Apollo filed a request to extend the stay on February 9, 2007. On February 26, 2007, Plaintiff filed an Amended Verified Complaint concurrently with an opposition brief. Among other things, the opposition brief criticized the

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process and composition of the Special Committee of the Board of Directors charged with conducting the internal investigation. In response, on March 13, 2007, Apollo announced it had replaced director Daniel Diethelm (Chairman of the Special Committee) with director James R. Reis on the Special Committee.

On May 22, 2007, Apollo filed its delinquent public filings with the SEC containing financial statements that were restated as a result of Apollo's investigation into its past stock option backdating practices. Plaintiff filed a supplemental brief in opposition to Apollo's motion to extend stay informing the Court of the SEC filings. On June 14, 2007, Apollo and the individual defendants filed motions for extension of time to answer or otherwise respond to the Amended Verified Complaint. Plaintiff filed oppositions the following day. On June 19, 2007, the Court denied defendants' motions for extension and ordered Apollo and the individual defendants to file a response to the Amended Verified Complaint by July 2, 2007. On July 2, 2007, Apollo and the individual defendants filed motions to dismiss the Amended Complaint. Plaintiff filed oppositions to the motions to dismiss. On August 1, 2007, the Court appointed Louisiana Municipal Police Employees' Retirement System as Lead Plaintiff. On August 9, 2007, the Court denied the motions to dismiss without prejudice stating that these motions may be renewed after resolution of the motion to terminate to be filed by Apollo Group, Inc.'s Special Litigation Committee ("SLC"). On August 17, 2007, the SLC filed its motion to terminate this derivative action.

Case Documents

- February 26, 2007 - Amended Verified Shareholder Derivative Complaint

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