

In re Big Lots, Inc. Shareholder Litigation

COURT: United States District Court Southern District of Ohio Eastern Division
CASE NUMBER: 2:12-cv-00445-MHW-KAJ
JUDGE: Judge Michael H. Watson / Magistrate Judge Kimberly A. Jolson
CASE CONTACTS: Mark Lebovitch, David Wales, Christopher J. Orrico, Laura Lefkowitz

This derivative action (the “Action”) arises out of an alleged insider selling scheme and stock repurchase plan perpetrated by Big Lots Inc.’s (the “Company” or “Big Lots”) current and former officers and directors at the expense of the Company and its public stockholders.

Between May 21, 2012 and July 2, 2012, Lead Plaintiffs LAMPERS, Atlanta Firefighters and plaintiff Lamb filed stockholder derivative actions in this Court seeking redress under Ohio law for alleged breaches of fiduciary duty, unjust enrichment, and other violations of law by certain of the Company’s current and former officers and directors in connection with an alleged insider selling scheme perpetrated by the Director Defendants at the expense of the Company and its stockholders. *Lamb v. Berger*, No. 2:12-cv-445 (S.D. Ohio); *LAMPERS v. Berger*, No. 2:12-cv-447 (S.D. Ohio);, and *City of Atlanta Firefighters’ Pension Fund v. Berger*, No. 12-cv-590 (S.D. Ohio). Each of these actions alleged that pre-suit demand on the Board of Directors of Big Lots (the “Board”) was futile and were consolidated (the “Consolidated Action”).

For over six years of litigation, Plaintiffs withstood multiple motions to dismiss and engaged in extensive party and third-party discovery totaling almost a million pages of documents. On October 31, 2017, the Parties, including the special litigation committee formed by Big Lots’ Board (the “SLC”), finalized their negotiations with the assistance of a nationally recognized mediatory and agreed upon a Settlement. Specifically the Settlement provides a \$3.5 million payment to the Company – a significant percentage of the potential recoverable damages – and substantial corporate governance reforms that will meaningfully address the concerns that led to the filing of the Action. (A copy of the Settlement can be accessed [Here](#)). The Company has agreed, for example, to:

- Strengthen the Company’s Insider Trading Policy, including implementing enhanced recordkeeping requirements for pre-clearance requests and a requirement that the General Counsel reports to the Nominating/Corporate Governance Committee on a semiannual basis about the Company’s trading compliance program and related topics;
- Continue to maintain a claw back policy that empowers the Compensation Committee of the Board of Directors to seek recovery of any excessive incentive-based compensation paid to any employee whose misconduct is found to have contributed to the Company’s having to prepare an adverse accounting restatement;
- Engage an outside consultant to provide continuing education to the Board of Directors on corporate governance topics including insider trading and securities laws;
- Enhance the Company’s Whistleblower Hotline procedures, including requiring the Audit Committee to receive and memorialize a report concerning any whistleblower complaint and follow-up action taken related to insider trading; and
- Amend the Company’s Corporate Governance Guidelines to require that all directors attend the Company’s annual shareholder meeting in person.

By the time the Parties agreed to the Settlement, Plaintiffs were in the midst of continued discovery into the merits of the Action, as well as the propriety of the investigation conducted by the SLC into Plaintiffs’ pending claims.

Plaintiffs submitted their motions for final approval of settlement and attorneys' fees and expenses on June 28, 2018. The hearing for final approval of the settlement was held on July 26, 2018. On August 28, 2018 Judge Michael H. Watson issued an Opinion and Order granting final approval of the settlement and motion for attorney fees.