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MY EXPERIENCE AS A LEAD PLAINTIFF

By R. Randall Roche, Esq.

On January 28, 1998, the Louisiana School Employees' Retirement System ("LSERS") and the Louisiana Municipal Police Employees' Retirement System ("LMPERS" and, collectively, the "Louisiana Retirement Systems") filed a securities fraud class action against 3Com Corporation on behalf of a class of purchasers of 3Com stock. These public pension funds successfully sought to become lead plaintiffs, oversaw the prosecution of the case, and, after nearly three full years of intensive and hard-fought litigation, achieved a landmark settlement of \$259 million in cash. The settlement is one of the largest ever obtained from a corporate defendant in a securities case since the passage of the



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Private Securities Litigation Reform Act of 1995 (the "PSLRA").

In keeping with our goal to present timely and meaningful information concerning class action litigation to institutional investors, we believe it is appropriate to describe the critical role played by the Louisiana Retirement Systems in the prosecution and ultimate resolution of the case, and to present the Systems' viewpoint of the litigation. Accordingly, we asked R. Randall Roche, Esq., the General Counsel of the LSERS and the LMPERS, to provide his thoughts on his experiences serving as lead plaintiff in In re 3Com Corp. Securities Litigation.

In late 1997, the LSERS and the LMPERS became aware that numerous class actions had been filed against 3Com, alleging that 3Com had misrepresented its financial condition and issued false financial statements during the period between April and November 1997. Many of these alleged misrepresentations were made in connection with 3Com's merger with U.S. Robotics Corporation in what was, at the time, the largest merger in the history of Silicon Valley. Although neither the LSERS nor the LMPERS had ever served or sought to serve as a lead plaintiff in a securities class action before, we were aware of the PSLRA and the fact that Congress enacted the PSLRA because it specifically wanted institutions to control securities class actions. The case caught our attention for two reasons: first, the Louisiana Retirement Systems had made substantial purchases of 3Com stock during the Class Period and had sufficient significant losses; and second, the allegations of wrongdoing were particularly egregious. Indeed, in October 1997, The New York Times had published an article

which basically accused 3Com and U.S. Robotics of "accounting alchemy" and of deliberately manipulating U.S. Robotics' financial results to complete the merger. Moreover, after the merger, the senior officers and directors of 3Com and U.S. Robotics sold more than \$200 million worth of their 3Com stock holdings.

In sum, we knew this was an important case, both from the standpoint of deterring financial fraud and of attempting to recoup our losses. However, most, if not all of the cases that had been filed had been brought by small, nominal shareholders who would likely have no involvement in the litigation and would not be able to exercise any control over the attorneys. We strongly believed that, if an institution did not step forward, we were concerned that the case could settle for "pennies on the dollar." Accordingly, although we knew that the litigation would require a substantial commitment from us, we decided to move to be appointed lead plaintiff.

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We considered a number of law firms and decided to retain the firm of Bernstein Litowitz Berger & Grossmann LLP. We chose Bernstein Litowitz because the firm had extensive experience in securities litigation and because its securities practice catered to institutional investors. Bernstein Litowitz agreed to represent the Louisiana Retirement Systems on a contingency basis, and further agreed that any fee would be substantially less than the one-third fee that was commonly sought in securities class actions. We made it clear from the outset that we expected to be in control of the litigation, and that we wanted regular periodic reports from our counsel on the case. Bernstein Litowitz agreed, and not only respected our wishes, but welcomed our involvement in all facets of the litigation from the pleading of the complaint through the settlement negotiations.

The Louisiana Retirement Systems took their role as lead plaintiffs very seriously, and we were actively involved in the case from the outset. As General Counsel of the LSERS and LMPERS, I had primary responsibility on behalf of the Louisiana Retirement Systems for supervising the prosecution of the action. In that capacity, I reviewed all of the important pleadings in the case, and attended the hearing on defendants' motion to dismiss the complaint. I was consulted on all major strategic decisions. I also participated in several face-to-face meetings with defense counsel regarding the scope of discovery and defendants' objections.

In the summer of 2000 after more than two years of intensive litigation the parties agreed to mediate the litigation before a federal Magistrate Judge. It was during the settlement negotiations that the Louisiana Retirement Systems had their greatest impact, and we were, I believe, instrumental in obtaining the settlement. The parties held four separate mediation sessions in San Jose,

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California over a four-month period, and I attended each session. Our presence at the mediation gave the plaintiffs credibility with the defendants and the mediator, and sent a message that this was not going to be "business as usual," that is, the situation where there is no real party interest on the plaintiffs' side spearheading the interests of the Class. We were consistently looked to by the mediator and the defendants for our views on the settlement, and we rejected numerous offers that were very substantial.

At the same time, however, we had to balance our goal of obtaining a meaningful recovery with the reality that this was an extremely risky litigation. Establishing defendants' liability in any securities class action is extremely difficult, and liability in this case was far from assured. Moreover, proving that the Class was damaged by the alleged fraud also would have been challenging. The defendants argued that virtually all of the decline in the price of 3Com stock that occurred was not related to our case, but to general market conditions and an overall downturn in the Nasdaq market. While our damages expert disagreed, there was no question that this was a significant risk in the case. We were faced with a situation

where we could have proved that defendants made misrepresentations, but then have a jury determine that we were entitled to no recovery. Finally, significantly, we had to take into consideration the delays inherent in any litigation. The case had been proceeding for nearly three years, and if we were unable to reach a resolution, it would undoubtedly be at least another year before we got to trial. Even then, we would have to deal with the inevitable appeals that follow a jury verdict, which would have further delayed any recovery. So, based upon our consideration of these factors, we decided to accept defendants' offer of \$259,000,000. While we will not know for sure what percentage of our damages this amount represents until all of the claims are received and processed, we expect to recover at least 30 percent and possibly more than 50 percent.

In conclusion, we were greatly pleased with our decision to become lead plaintiffs. While the case did require my attention, the PSLRA allows for lead plaintiffs to recover their reasonable costs and expenses relating to their involvement in the case, including lost wages. The settlement we were able to obtain is an outstanding result for the Class and will result in the class recovering a significant percentage of their loss. I have no doubt that the involvement of the Louisiana Retirement Systems materially increased the size of the settlement.

R. Randall Roche, Esq., the General Counsel for LSERS, can be reached via e-mail at rroche01@ix.netcom.com. Max W. Berger and Douglas McKeige, partners at Bernstein Litowitz Berger & Grossmann LLP, and Steven Singer, a senior associate at the Firm, handled the case for the Louisiana Retirement Systems.