



Options Memo Points to Dating

Internal Sycamore memo in employee suit talks of options backdating.

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Sycamore Networks employees allegedly discussed the timing of stock option grants and how they could be manipulated, according to a memo unearthed in a lawsuit filed by an HR employee who claims he was fired after refusing to alter employee hiring dates.

Former human resources director Stephen Landry said in his lawsuit that the company removed him in 2000 from the HR department after he complained about the options-granting practices to his superiors.

Sycamore instead moved him to an advisory position, but later fired him in 2005 and reneged on a \$10.8-million employment agreement and severance package.

The 2001 memo, as reported by *The Wall Street Journal*, describes a series of grants to six employees of the optical networking equipment maker in which the HR department was instructed to change the hiring dates for the employees in order to allow them to get option grants at a lower price.

One employee, for example, who started at the Chelmsford, Massachusetts-based company on January 2, 2001, allegedly had his start date changed to December 21, 2000 in order to take advantage of the low price for the stock that quarter, according to the memo.

Some employees asked for the options to be granted in different quarters because of the changes in stock price. The memo notes when there is a low risk of exposure because somebody is a senior employee, and the chances of an audit uncovering the manipulations.

At least one option grant is described as being deleted from the system in order to cover up the changed date. According to his lawyer, Mr. Landry received a copy of the memo from another employee who found it sitting in the fax machine.

Sycamore would not comment on the allegations. "Per our corporate policy, the company declines to comment on any matters related to pending litigation," said Sycamore Networks spokesperson Scott Larson. Shares of Sycamore fell \$0.17 to \$3.77 in recent trading.

Shareholder Suits and More

The company did discuss the allegations in a regulatory filing with the U.S. Securities and Exchange Commission on Monday, however.

"The complaint also alleges that certain actions and statements of the company constituted fraud and deception that induced the former employee to enter into a letter agreement and general release in October of 2000 related to his separation from the company, which provided for, among other things, the continued vesting of previously issued stock option grants," said the filing.

"The complaint further alleges that the former employee was induced to not exercise his options as a result of alleged false and misleading statements, alleges wrongful termination and retaliation, and

'Just having those insurance policies isn't the same as having the insurance companies pay.'
-Jonathan Cohen, Gilbert Heintz & Randolph

alleges claims relating to certain of the Company's stock option grant practices in 1999-2001."

Sycamore noted that the lawsuit seeks lost wages, unspecified monetary damages, and reinstatement of medical benefits, among other things. But Sycamore said it believes it has "meritorious defenses to the complaint, intends to vigorously contest this action, and intends to file counterclaims, as appropriate."

In addition to that lawsuit, Sycamore said in the filing it had been hit by another shareholder lawsuit on top of the one it previously disclosed, along with investigations by the SEC and the U.S. Attorney's Office for the District of Massachusetts.

Insurance Coverage Impact

Sycamore is one of about 50 companies that have come under scrutiny for their options-granting practices (see [Options Fallout Widens in Tech](#)).

Another company, the online job recruitment firm Monster Worldwide, said Tuesday it may need to restate its financial results for 2005 and prior years as a result of charges related to option grants.

It is likely that companies and executives will have to pay considerable sums in financial restatements, lawsuit damages, extra taxes, and fines. The directors' and officers' insurance policies they take out are not necessarily going to cover all the expenses either.

Jonathan Cohen, a partner with the Washington, D.C., law firm Gilbert Heintz & Randolph, predicts disputes between corporations accused of options backdating and their insurers.

"Most of these companies, if not all of them, have insurance coverage that may protect them and defend them against the suits and the liability, but just having those insurance policies isn't the same as having the insurance companies pay," he said.

He predicted that many insurance companies would try to take advantage of loopholes in their policies to avoid making so many steep payouts.

"Companies need to be able to avoid those pitfalls or else they are at risk of eliminating their coverage," said Mr. Cohen.

He believes the level of insurance coverage and the provisions in the policies will in many cases dictate how willing companies are to fight the lawsuits or settle.

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