BECTON SUES SUN CO. TO BLOCK TAKEOVER

'Illegal Acquisition' Alleged in Suit That Names Six Others

By ROBERT J. COLE

Vigorously battling a $293 million takeover attempt, Becton, Dickinson & Company, the big New Jersey hospital supplier, charged the Sun Company in a suit filed here yesterday with making an "illegal acquisition" and six others with acting "in concert and conspiracy."

The suit, filed in Manhattan Federal Court, came some two weeks after Sun announced that it had purchased nearly 6.5 million shares of Becton, or 34 percent of the company, in a series of private purchases at $45 a share.

The disclosure set off a furor on Wall Street, four stockholder lawsuits, three separate investigations and a flood of top-level Congressional mail on Becton's behalf to the Securities and Exchange Commission.

Named as defendants in yesterday's suit besides Sun were LHIW, a Sun subsidiary; Fairleigh S. Dickinson Jr., former Becton chairman, who sold his shares

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to Sun; J. H. Fitzgerald Dunning, a Becton director who also sold to Sun; Salomon Brothers and F. Eberstadt & Company, financial advisers to Sun, and the Chemical Fund and the Surveyor Fund, organizations managed by Eberstadt.

A spokesman for Sun termed the suit "without merit," maintaining that "the description of the acquisition is factually inaccurate."

Robert G. Zeller, chairman of Eberstadt, speaking for Eberstadt and the two funds, said the accusations were "not true." John H. Gutfreund, senior partner of Salomon Brothers, said, the firm had no comment now.

Through his New York attorney, Mr. Dickinson also declined to comment. Mr. Dunning could not be reached at home or through his lawyer.

On the New York Stock Exchange yesterday Sun shares fell 1¼ points to 37⅜, while Becton dipped ¼ to 39⅞.

At issue in the suit—whose outcome could affect hundreds of companies vulnerable to takeover—is whether Sun was acting within the law in dealing privately with a handful of Becton stockholders.

One major legal point concerns the role played by Sun's financial advisers—Salomon and Eberstadt—in rounding up Becton stock and whether the transactions were concluded during a time that Sun had asked for a trading halt in Becton stock.

According to Becton, Sun and other defendants engaged in a "quick tender offer made only to preferred insiders and large shareholders without disclosure of material information or the time for reflection required by law.

Mr. Dickinson and Salomon Brothers, "aided by abetted by and in concert with" other defendants, the suit further charged, embarked on a plan to sell Becton "in an illegal manner."

Dickinson Ousted

The suit contended that prior to last Dec. 1 Mr. Dickinson, who was ousted by Becton management as Becton chairman earlier in the year, formed a group made up of Mr. Dunning, Eberstadt and its two funds and his daughter Ann, not named as a defendant in the suit, for the purpose of "selling control" of Becton, including their own shares. Others then joined the group, the complaint alleged, at the solicitation of Mr. Dickinson, Salomon Brothers and Eberstadt.

Salomon and Eberstadt, the suit maintained, approached several "major companies" in what was called "an unsuccessful effort to induce them to acquire control of Becton from the group and others." In approaching the companies, the suit said, the defendants (other than Sun) "represented that they spoke for more than 5 percent and as much as 20 percent of Becton."

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Sun to Sell Its Becton Interest

By ROBERT J. COLE

The Sun Company, which lost a landmark court case last July over its secret purchase of a nearly $300 million stock interest in Becton, Dickinson & Company, the big New Jersey hospital supplier, agreed yesterday to divest itself of its controversial 32 percent stake in Becton. The move would settle all litigation against the company.

The settlement, approved in principle by the Securities and Exchange Commission and other plaintiffs, pending court approval, also ended "costly and prolonged litigation along with the attendant investor and employee uncertainty about the future of the company," according to Becton's president, Wesley J. Howe.

Becton's legal costs were estimated at $3 million, while the defendants, largely Sun, are believed to have spent some $7 million.

Terms of the agreement provide for Sun to issue within two years 25-year debentures exchangeable into the 6.5 million Becton shares it holds. The exchange price, which would be fixed at the time of the debenture offering, would not exceed $60 a share, meaning that Sun could raise nearly $400 million if its exchange price were that high.

But whether Sun will be able to recover its investment cost — or even show a profit on it — will depend how rapidly investors decide to exchange the debentures for stock. The longer they wait, the heavier will be Sun's interest costs on the debentures.

Sun paid $45 a share for the Becton stock when the market price was only $32. But earlier this year, after lawsuits by Becton, Becton shareholders and the S.E.C., Judge Robert L. Carter ruled in Manhattan Federal court that the purchase constituted a tender offer and, therefore, violated Federal securities laws in that Sun did not make the offer to all shareholders.

Terms also call for the debentures to provide annual redemptions beginning in the 11th year and for Becton to repurchase any of its own shares not exchanged by debenture holders at a price ranging from $49.50 to $60 up to a maximum of $200 million, or $26 million in any one year.

Sun would remain the owner of the shares and retain dividend rights, but the underlying shares vested in the debentures would be voted by the debenture holders. Sun would also have the right to name one director to the Becton board until its holdings fell below 7.5 percent of Becton's stock.

Class-action lawsuits, moreover, would be settled by the payment of $2.6 million to investors.

Although the case against Sun is ended, court remedies, if any, are pending in a forthcoming trial involving unresolved charges against Fairleigh S. Dickinson Jr., former chairman of Becton, and both Salomon Brothers and F. Eberstadt & Company, Wall Street investment firms that helped Sun purchase the Becton stock.

A day earlier, when the proposed settlement was laid before the court, Judge Carter, apparently seeking the support of other judges for his important decision, was understood to have remarked somewhat lightheartedly that he hoped the case would eventually go to the United States Court of Appeals.

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