

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

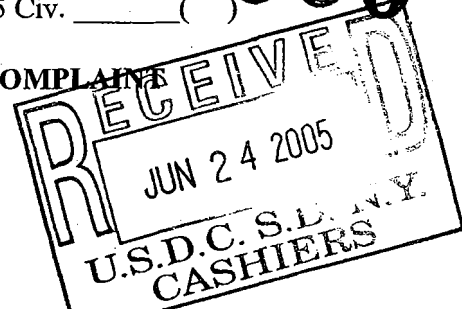
v.

PATRICK A. GROTTO,  
MARK B. LEFFERS, and  
JON M. BLOODWORTH,

Defendants.

05 CV 5880  
05 Civ.

COMPLAINT



Plaintiff Securities and Exchange Commission ("Commission") alleges the following:

**NATURE OF THE ACTION**

1. This case involves fraud in connection with the June 2000 initial public offering ("IPO") by busybox.com, Inc. At the time of the fraudulent IPO, defendant Patrick A. Grotto was chief executive officer and chairman of Busybox's board of directors, defendant Mark B. Leffers was chief financial officer, and defendant Jon M. Bloodworth was general counsel and a director. The defendants knowingly or recklessly participated in the fraud, together with Thomas T. Prousalis, Jr., Busybox's outside counsel, and Robert T. Kirk, Jr., the president of Busybox's underwriter, Barron Chase Securities, Inc.

2. From early 1999 until its bankruptcy filing in July 2001, Busybox generated virtually no revenues and annually incurred substantial operating losses. In 1998, the company had total revenues of \$1,170,022 and an operating profit of \$7,000. In 1999, the company had total revenues of \$351,161 and an operating loss of \$6,866,556. For the nine month period ending September 30, 2000, Busybox reported total revenue of \$85,569 and posted an operating

loss of over \$4.6 million. At certain times in 1999 and 2000 prior to the close of the IPO, Busybox was not even able to make payroll. As a result, the defendants knew that Busybox would not survive and they would not receive their accrued salaries and bonuses or other ongoing financial benefits from the company, without the proceeds from the IPO.

3. The scheme to close the IPO arose when Barron Chase, which had agreed to raise approximately \$12.8 million for Busybox, purportedly could not sell all of the IPO securities to bona fide investors. After learning from Prousalis and Kirk that Barron Chase was having difficulty selling the IPO securities, the defendants knowingly or recklessly participated in a fraudulent scheme to complete the offering. As part of the fraudulent closing, the defendants and five other Busybox insiders agreed personally to purchase unsold IPO securities with unearned and undisclosed "bonuses" that they arranged for the company to pay to themselves. The defendants also agreed to pay Prousalis an inflated legal fee using IPO securities. As a result, the defendants, Prousalis and the other Busybox insiders acquired almost 20 percent of the securities sold in the IPO, securities worth \$2.5 million, without using any of their personal funds.

4. The Busybox registration statement and prospectus were materially false and misleading in their discussions of, among other things, the nature and expenses of the underwriting, the plan of distribution, the amount and use of proceeds, the compensation of executives, and the extent of insider ownership of Busybox. (i) the actual nature of Barron Chase's underwriting agreement; (ii) that the defendants would be acquiring company stock in order to close the IPO; (iii) the company would be paying out substantial unearned "bonuses" to compensate Busybox insiders for purchasing the stock; (iv) the company would be paying outside counsel in company stock in order to close the IPO; (v) outside counsel's legal fees were

contingent upon the closing of the IPO and would be significantly more than the estimated \$375,000; (vi) the net IPO proceeds available to the company would be reduced by \$2.1 million; and (vii) the net IPO proceeds would be further reduced by \$2.8 million due to planned but undisclosed expenditures within seven days of the IPO closing.

5. By intimately participating in the preparation of the Busybox registration statement, the defendants knew or were reckless in not knowing that the registration statement was materially false and misleading. Nevertheless, the defendants signed the registration statement in their capacities as officers and directors of Busybox, filed it with the Commission knowing it would be distributed to numerous actual and potential investors. Furthermore, on June 30, 2005, the date defendants and others received nearly 20% of the IPO securities, the defendants certified, among other things, that: (i) the registration statement and prospectus were truthful in all material respects; and (ii) there had been no event or development that would have a material adverse effect on the information set forth in the registration statement and prospectus.

6. Beyond using their positions as officers and directors to obtain hundreds of thousands of dollars worth of Busybox securities, the defendants also used the IPO proceeds to directly benefit themselves. Ignoring the company's consistently poor financial performance and rapidly declining revenues, within 24 hours of receiving the secretly reduced IPO proceeds, the defendants caused the company to pay themselves over \$375,000. By September 30, 2000, a mere 3 months after the close of the IPO, the defendants had arranged for the company to pay themselves over \$500,000 in IPO proceeds. By December 2000, less than six months after the close of the IPO, the defendants had caused the company to pay themselves approximately

\$670,000 from the IPO proceeds and all but \$200,000 of the proceeds of the IPO had been dissipated.

7. By knowingly, recklessly, or negligently engaging in the conduct described herein, the defendants, directly or indirectly, violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] and Sections 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

### **JURISDICTION**

8. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(1), 78u(e), 78aa, and 78u-1)].

9. The defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged herein.

10. Unless restrained and enjoined, the defendants will continue to engage in the transactions, acts, practices and courses of business alleged herein, or in the transactions, acts, practices and courses or business of similar purport and object. The Commission seeks an order permanently enjoining the defendants from future violations, and directing disgorgement of their ill-gotten gains and other relief, pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Sections 21(d)(1) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d)(1) and 78u(e)]. The Commission also brings this action for an award of civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Lastly, the Commission seeks an order, pursuant to Section 20(e) of the Securities Act

[15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], prohibiting the defendants from acting as officers or directors of any issuer that has a class of securities registered pursuant to Sections 12 or 15(d) of the Exchange Act.

#### **DEFENDANTS**

11. Patrick A. Grotto, age 53, is a resident of New York, New York and was chairman and chief executive officer of Busybox from December 1998 to November 2000.

12. Mark B. Leffers, age 40, is a resident of Queenstown, Maryland and was the chief financial officer, treasurer and controller of Busybox from March 1999 to November 2000.

13. Jon M. Bloodworth, age 44, is a resident of Sante Fe, New Mexico and is an attorney licensed to practice in California. Bloodworth was vice president, general counsel, secretary and a director of Busybox from 1995 to 2001.

#### **RELATED ENTITIES AND INDIVIDUALS**

14. Busybox was a Delaware corporation that was headquartered in Century City, California. Busybox sold still photographs, film footage and video over the Internet. Following the IPO, Busybox's securities traded on the NASDAQ Small Cap Market, a nation-wide electronic trading system. Busybox filed a Chapter 7 bankruptcy petition in the Central District of California on July 30, 2001 and is now defunct.

15. Barron Chase was a Colorado corporation and a broker-dealer with its headquarters and principal place of business in Boca Raton, Florida, and other offices in New York, California, and elsewhere. One of Barron Chase's primary business activities was providing investment banking services to corporations seeking to raise money from the public.

16. Robert T. Kirk, Jr., was president and majority owner of Barron Chase Securities, Inc., the lead managing underwriter for the Busybox IPO.

17. Thomas T. Prousalis, Jr., was a lawyer licensed to practice in Washington, DC and was securities counsel to Busybox.

## FACTS

### Background

18. In 1998, the officers and directors of Busybox decided that the company should attempt to raise funds by selling securities to the public. Towards this end, in or about December 1998, Busybox officers, including Bloodworth, met with Grotto and Prousalis in New York City. Grotto was a businessman who claimed to have experience with start-up and media companies and Prousalis was a Washington, D.C. attorney who purportedly had served as securities counsel for several small companies that had gone public. Shortly after this meeting, Busybox hired Grotto to be its chairman and CEO and, at Grotto's direction, Busybox retained Prousalis to serve as its outside securities counsel. In addition, Busybox hired Leffers, a former colleague of Grotto's, as its CFO. Under Busybox's new management, Bloodworth stayed on as general counsel and director.

19. The retainer agreement between Prousalis and Busybox, dated December 9, 1998, required Busybox to make payments to Prousalis only if Busybox raised funds through the sale of securities in a private placement or a public offering. Upon the close of an IPO or a private placement offering, the retainer agreement required Busybox to pay Prousalis \$375,000 or 7.5 percent of the gross proceeds of the offering, whichever was greater, plus expenses. In 1999 and 2000, Busybox completed three private placement offerings of stock and debt. In each case,

Busybox paid Prousalis a fee of 7.5 percent of the amount raised. Prior to executing the retainer agreement with Prousalis, Bloodworth and Grotto were forewarned by counsel from a disinterested law firm that the proposed legal fee was excessive and its contingent nature created an undue incentive for Prousalis not to be an objective securities adviser to Busybox.

20. In or about April 1999, Busybox and Barron Chase executed a letter of intent for the firm to serve as the lead managing underwriter for an IPO of Busybox securities. The letter of intent and draft underwriting agreement called for Barron Chase to purchase the entire IPO – an arrangement known as a “firm commitment” underwriting. A firm commitment underwriting obligated Barron Chase to buy all of the shares in the offering, regardless of whether it was able to resell those shares to bona fide investors. The final underwriting agreement was not executed until after the Commission declared the registration statement effective on June 26, 2000. In the final agreement, Barron Chase agreed to buy all of the securities issued in the Busybox IPO at an underwriter’s discount of 9 percent and Busybox agreed to pay Barron Chase a further “expense allowance” of 3 percent of the gross proceeds. Prior to executing the letter of intent and underwriting agreement with Barron Chase, Bloodworth was advised by legal counsel from a disinterested law firm that the underwriting firm “was regarded as a boiler room shop.”

#### **Registration Statement**

21. Registration statements filed with the Commission are public documents and are available for review at the Commission’s offices, on the Commission’s web site, and through commercial web sites. Under the federal securities laws and regulations, registration statements for IPOs are required to fully and accurately describe and disclose, among other things: (i) the company issuing the securities, its business operations, its assets, liabilities and recent financial

results, and its future business plans; (ii) the plan of distribution of the IPO securities, that is, how much money will be raised, how the securities will be sold, and to whom, and the expenses of the distribution; (iii) how the issuer plans to spend the IPO proceeds; and (iv) the identity of the issuers' management, and management's compensation and ownership interests. Since companies engaged in an IPO are, by definition, new to the investing public, the registration statement is in many cases the only source of information available to investors about the company.

22. In connection with its IPO, Busybox prepared and filed with the Commission a registration statement. The original version of the registration statement was filed on June 19, 1999 and was followed by seven amendments. The eighth and final version of the registration statement was filed with the Commission on or about May 23, 2000. The final registration statement was distributed to investors and copies of the Registration statement were also provided to the National Association of Securities Dealers, the Standard & Poors stock rating service and the Depository Trust Company in New York City. The defendants all participated in reviewing and editing the registration statement and its amendments. They also signed the registration statement and all the amendments in their capacities as officers and directors of Busybox.

23. According to the final version of the Registration statement:

a. Busybox offered to sell to the public 2,500,000 shares of common stock at \$5.00 per share, and 2,500,000 warrants to purchase an additional share of common stock at \$.125 per warrant.

b. The total amount to be raised, before deducting expenses incurred in connection with the IPO, such as underwriting and other fees was \$12,812,500.





















