

Hain Celestial Group: Working with Activist Investors (A)¹

Irwin Simon did not want to pick up the phone. The chief executive and founder of Hain Celestial Group Inc.'s assistant said there was "a guy named Carl Icahn" on the other line. Everything was about to change.

It was 2010, and Icahn had just purchased a 12% stake in the company. "After that, it became like a circus," Simon told *The Wall Street Journal*. "It was kind of like an earthquake went through the company."

[The following text is extremely faint and largely illegible, appearing to be a series of paragraphs or a list of points related to the case study.]

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highlighting the casual-dining chain's scratch-made food, refining the menu in response to lower consumer spending, cutting costs, and appointing new board members.

Sardar Biglari, owner of about 9% of the company at the time, had other ideas. Biglari believed he could guide the company to success and deserved a seat on the Cracker Barrel board.

To combat the activist investor, Cochran along with her CFO Lawrence Hyatt met with other stakeholders and proxy advisers to promote her plan and keep Biglari off the board.

The strategy worked, and Biglari failed to obtain a seat. But, he bought a larger stake in the

company, buying an additional 10% and announcing his intention to run for the board. He then filed a lawsuit to force Cochran and Hyatt to resign from the board, claiming they were acting in bad faith.

The lawsuit was eventually dismissed. Biglari's lawsuit was dismissed because he failed to show that Cochran and Hyatt acted in bad faith. The court found that Cochran and Hyatt acted in the best interests of the company and its shareholders.

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What Happened

When the activist investor, T. Boone Cochran, announced his intention to run for the board, Biglari bought a larger stake in the company and announced his intention to run for the board.

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Figure 3: CEO Strategies for Dealing with Activist Investors

Engage activists' letters, responses known as "red flagging" to find potentially misleading statements. Show the statements to regulators to antagonize the activist.
Have SEC staff review including the chief financial officer and other independent board members to plan strategy.
Use lawyers to press over shareholders and trading records to see who is going into the company's stock and likely to back the activist.
Send corporate lawyers with tactics such as a "poison pill" a contractual tactic that blocks activists from taking too big a position.
Use actions to side step, interactions with different activists.
Compile lists of activist names to use one approach at a conference. Prepare CEO to respond to "white paper" about their company's shortcomings.

REFERENCES

Block, David. "SEC's New Controlling-Shareholder Rules." *The Wall Street Journal*, November 25, 2010.

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