

FOREST LABORATORIES INC  
Form DFAN14A  
August 10, 2011

## SCHEDULE 14A

**Proxy Statement Pursuant to Section 14(a)**

**of the Securities Exchange Act of 1934**

**(Amendment No. )**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only** (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to § 240.14a-12

## **Forest Laboratories, Inc.**

(Name of Registrant as Specified In Its Charter)

**Carl C. Iahn**

**Dr. Alexander J. Denner**

**Dr. Richard Mulligan**

**Professor Lucian A. Bebhuk**

**Dr. Eric J. Ende**

**Mayu Sris**

**Iahn Partners LP**

**Iahn Partners Master Fund LP**

**Iahn Partners Master Fund II L.P.**

**Icahn Partners Master Fund III L.P.**

**High River Limited Partnership**

**Hopper Investments LLC**

**Barberry Corp.**

**Icahn Onshore LP**

**Icahn Offshore LP**

**Icahn Capital L.P.**

**IPH GP LLC**

**Icahn Enterprises Holdings L.P.**

**Icahn Enterprises G.P. Inc.**

**Beckton Corp.**

**(Name of Person(s) Filing Proxy Statement, if other than the Registrant)**

Payment of Filing Fee (check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rule 14a-6(i)(4) and 0-11.

1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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5) Total fee paid:

.. Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

ON JULY 19, 2011, THE PARTICIPANTS (AS DEFINED BELOW) FILED A DEFINITIVE PROXY STATEMENT WITH THE SECURITIES AND EXCHANGE COMMISSION. SECURITY HOLDERS ARE ADVISED TO READ THE DEFINITIVE PROXY STATEMENT AND OTHER DOCUMENTS RELATED TO THE SOLICITATION OF PROXIES BY CARL C. ICAHN, DR. ALEXANDER J. DENNER, DR. RICHARD MULLIGAN, PROFESSOR LUCIAN A. BEBCHUK, DR. ERIC J. ENDE, MAYU SRIS, ICAHN PARTNERS LP, ICAHN PARTNERS MASTER FUND LP, ICAHN PARTNERS MASTER FUND II L.P., ICAHN PARTNERS MASTER FUND III L.P., HIGH RIVER LIMITED PARTNERHIP, HOPPER INVESTMENTS LLC, BARBERRY CORP., ICAHN ENTERPRISES G.P. INC., ICAHN ENTERPRISES HOLDINGS L.P., IPH GP LLC, ICAHN CAPITAL L.P., ICAHN ONSHORE LP, ICAHN OFFSHORE LP, AND BECKTON CORP. (COLLECTIVELY, THE PARTICIPANTS ) FROM THE STOCKHOLDERS OF FOREST LABORATORIES, INC. FOR USE AT ITS 2011 ANNUAL MEETING OF STOCKHOLDERS, BECAUSE THEY CONTAIN IMPORTANT INFORMATION, INCLUDING INFORMATION RELATING TO THE PARTICIPANTS. THE DEFINITIVE PROXY STATEMENT AND A FORM OF PROXY IS AVAILABLE TO STOCKHOLDERS OF FOREST LABORATORIES, INC. FROM THE PARTICIPANTS AT NO CHARGE AND IS ALSO AVAILABLE AT NO CHARGE AT THE SECURITIES AND EXCHANGE COMMISSION S WEBSITE AT [HTTP://WWW.SEC.GOV](http://www.sec.gov) OR BY CONTACTING D.F. KING & CO., INC. BY TELEPHONE AT THE FOLLOWING NUMBERS: STOCKHOLDERS CALL TOLL FREE: (800) 697 6975 AND BANKS AND BROKERAGE FIRMS CALL: (212) 269 5550.

Consent of the author and publication has not been obtained to use the material filed herewith as proxy soliciting material.

1

Forest Labs board needs change

Two independent proxy advisory firms issued analyses criticizing Forest Labs on several dimensions

Presiding independent director Goodman oversaw operations and made decisions leading to civil and criminal violations, also lacks independence

Compensation not tied to share performance  
Icahn Nominees will help drive necessary change,  
vote the GOLD card!

2

ISS and Glass Lewis both criticized Forest Labs for deeply flawed corporate governance

The image of the CEO sitting in on the ostensibly independent directors as they discuss whether or not to support him is uncomfortably close to that of a show trial: a **theatrical demonstration of power**, with a pre-determined outcome, in which those with ostensible authority must first and foremost demonstrate their zealous personal loyalty to **the one who holds real**

.  
All the subsequent protestations about personal integrity and independence **ring a little hollow**, when the right course of action

calling an executive session to let the unaffiliated outside directors debate the issues in private, without any undue influence from insiders was both an **obvious and easy choice**. That the meeting appears to have been **orchestrated from the C-suite**

the General Counsel, rather than the board's own outside advisors, apparently prepared and presented the materials which shaped the discussion does not help matters.

If there was ever a moment for the independent directors to take matters into their own hands, this was it. That they failed to do

so

and  
perhaps  
even  
failed  
to  
recognize  
their  
own  
responsibility  
to  
do  
so

is

We believe that there are various aspects of the Company's corporate governance that could suggest that the

. . .we believe that Mr. Solomon and other Company insiders **should have recused** themselves from the board deliberations and actual voting on the matter.

. . .we note that the board's primary committees (audit, compensation, and nominating and governance) have historically been comprised of the board's longest tenured directors, which we believe **may blunt the**

impact  
that  
can  
be  
made  
by  
the  
recently-appointed  
directors.

. . .the appointment of Mr. Goodman as presiding director leaves us feeling **highly dubious** of the board's ability to enact truly positive corporate governance reforms and only serves to drive home the Icahn Group's argument that the Company's board is **filled with**

.  
ISS  
Glass Lewis  
Source: ISS, Glass Lewis  
power  
deeply worrisome  
board  
has  
become

entrenched  
entrenched directors

.



3

ISS criticizes appearance of nepotism, in addition to highlighting corp. gov. concerns

However, the fact that the succession plan involves having a senior executive

presumably

a

candidate

for

the

top

job

report  
to his own father  
who presumably has some influence in the  
matter  
is **another bad omen**. SVP Solomon may in fact be the  
best candidate for the job, internally or externally: it is hard  
to  
know, if **all his senior level executive experience came at the**  
firm  
his  
father  
has  
been  
running  
for  
four  
decades.

At  
a  
publicly-held company, succession planning should never be  
confused, visually or procedurally, with **establishing a dynasty**.  
Unaffiliated shareholders **should be concerned** about the degree  
to which the independent directors are truly independent of the  
long-serving Chairman and CEO. Among the **red flags** are these  
directors  
apparent **unwillingness to exclude the CEO** from  
high-stakes discussions  
such as the company's response to  
threatened  
regulatory  
action  
against  
him  
individually

in  
which  
he  
is **clearly conflicted**, and their apparently easy acceptance of the  
fundamental  
conflict  
involved  
in  
making  
the  
CEO's  
own  
son  
one  
of his direct reports.

ISS Proxy Advisory Services, August 2011

4  
ISS and Glass Lewis also criticized Forest  
Labs on other dimensions  
Stock price and  
operating  
performance  
. . .it is still clear that the company's  
meager  
returns  
to  
shareholders  
over  
the half decade leading up to the  
announcement of this proxy contest have  
been  
substantially  
outpaced  
not  
just  
by the specialty pharma peers, but even  
by a blended group of big and specialty  
pharma peers.

We find that the Company's stock price performance was better than that of the Peer Group over the recent one-year period but has been worse than the Peer Group over the

. . . we note that the Company's compounded annual growth rates for revenue and operating income over the three- and five-year periods ended December 31, 2010 were all below the range of growth rates observed in the Peer Group. This raises some concerns that the board and management may not have been proactive enough in facilitating greater growth for the Company and its shareholders in recent years. Compensation practices Rated High Concern Received D

grade

Overall,

the

Company

paid

more

than

its

peers,

but

performed

moderately

worse

than its peers.

ISS

Glass Lewis

Source: ISS, Glass Lewis

longer term

5

Goodman's poor business judgment and lack of independence qualify him for removal

Current presiding independent director Goodman was President and COO, responsible for decisions leading to civil and criminal pleadings, payment of ~\$300M in fines, and higher costs and administrative burdens from implementation of corporate integrity agreement

Glass Lewis states:

- Moreover, we note that the board has neither appointed an independent chairman nor an independent presiding director

.  
.we do not consider him [Goodman] to be independent from the

Company's management given that he was employed as an executive by the Company within the past five years, served as a Company executive for more than 25 years, and received approximately \$198,000 in retirement benefits from the Company during fiscal year 2011.

Goodman poor choice for board, vote the GOLD card!

Source: Submission Behalf of Howard Solomon to the HHS-OIG from Davis Polk & Wardwell; Glass Lewis

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Chairman and CEO Solomon compensation  
not tied to share performance

Note: Fiscal year ends March 31

Source: Public documents

While Forest Labs equity value declined by  
~65%, Solomon paid ~\$60M

0

2

4

6

8

\$10M

Chairman & CEO Solomon compensation (\$M)

FY

2004FY

\$9.0M

2005FY

\$7.0M

2006FY

\$6.7M

2007FY

\$5.4M

2008FY



\$6.5M  
2009FY  
\$6.6M  
2010FY  
\$8.3M  
2011  
Bonus  
Salary  
Stock  
Other  
Options  
\$8.9M

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Special note regarding this presentation

This presentation includes information based on data found in filings with the SEC, independent industry publications

and other sources.

Although

we believe that

the data

is reliable,

we do

not guarantee

the accuracy

or completeness

of this information

and have

not independently

verified any

such information.

We have not sought, nor have we received, permission from any third-party to include their information in this presentation.

Many of the statements in this presentation reflect our subjective belief. Although we have reviewed and analyzed the information that has informed our opinions, we do not guarantee the accuracy of any such beliefs.

Sections of this presentation refer to the experience of our nominees for director at Forest Laboratories

during their

tenure as

directors of

Biogen

Idec,

ImClone  
Systems  
Inc.,  
Genzyme  
Corporation,  
Amylin  
Pharmaceuticals,  
and  
Enzon  
Pharmaceuticals.

We  
believe  
their  
experience  
at  
these  
companies

was  
a  
success and resulted in an increase in shareholder value that benefited all shareholders. However, their  
success at these companies is not necessarily indicative of future results at Forest Laboratories if our  
nominees

were  
to  
be  
elected

to  
the  
Forest  
Laboratories  
Board  
of  
Directors.

In  
addition,  
we  
acknowledge

that if elected, our nominees will be a minority of the directors and will not alone be able to adopt  
resolutions.

All stockholders of Forest Laboratories are advised to read the definitive proxy statement, the gold proxy  
card and other documents related to the solicitation of proxies by the Participants from the stockholders of  
Forest Laboratories for use at the 2011 annual meeting of stockholders of Forest Laboratories because they  
contain important information. The definitive proxy statement and form of proxy along with other relevant  
documents are available at no charge on the SEC's website at <http://www.sec.gov> or by contacting D.F.  
King & Co., Inc. by telephone at the following numbers: Stockholders call toll-free: (800) 697-6975 and  
Banks and Brokerage Firms call: (212) 269-5550. In addition, the Participants will provide copies of the  
definitive proxy statement without charge upon request. Information relating to the Participants is  
contained in the definitive Schedule 14A filed by the Participants with the SEC on July 19, 2011.