

Robinson Randolph C
Form 3
January 03, 2006

FORM 3 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL

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INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934,
Section 17(a) of the Public Utility Holding Company Act of 1935 or Section
30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *		2. Date of Event Requiring Statement	3. Issuer Name and Ticker or Trading Symbol	
Robinson Randolph C		(Month/Day/Year)	AcuNetx, Inc. [ANTX]	
(Last)	(First)	(Middle)	12/23/2005	
C/O ACUNETX, INC., 1000 S			4. Relationship of Reporting Person(s) to Issuer	5. If Amendment, Date Original Filed(Month/Day/Year)
MCCASLIN BLVD #300				
(Street)			(Check all applicable)	
SUPERIOR, CO 80027			<input checked="" type="checkbox"/> Director	6. Individual or Joint/Group Filing(Check Applicable Line)
(City)	(State)	(Zip)	<input type="checkbox"/> 10% Owner	<input checked="" type="checkbox"/> Form filed by One Reporting Person
			<input type="checkbox"/> Officer	<input type="checkbox"/> Form filed by More than One Reporting Person
			(give title below)	(specify below)

Table I - Non-Derivative Securities Beneficially Owned

1. Title of Security (Instr. 4)	2. Amount of Securities Beneficially Owned (Instr. 4)	3. Ownership Form: Direct (D) or Indirect (I) (Instr. 5)	4. Nature of Indirect Beneficial Ownership (Instr. 5)
Common Stock, \$.001 par value	8,534,758	D	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

SEC 1473 (7-02)

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

Table II - Derivative Securities Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 4)	2. Date Exercisable and Expiration Date (Month/Day/Year)	3. Title and Amount of Securities Underlying Derivative Security (Instr. 4) Title	4. Conversion or Exercise Price of Derivative Security	5. Ownership Form of Derivative Security: Direct (D)	6. Nature of Indirect Beneficial Ownership (Instr. 5)
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Date Exercisable	Expiration Date	Amount or Number of Shares	or Indirect (I) (Instr. 5)
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Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
Robinson Randolph C C/O ACUNETX, INC. 1000 S MCCASLIN BLVD #300 SUPERIOR, CO 80027	X	A	A	A

Signatures

/s/ Randolph C. Robinson 01/03/2006

**Signature of Reporting Person Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, *see* Instruction 5(b)(v).
 - ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *See* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. Person, or currently intends to do so, to make solicitations or recommendations to the Company's stockholders with respect to the Offer.

6. Interest in Securities of the Subject Company.

No transactions with respect to the Shares have been effected by the Company or, to the knowledge of the Company, by any of its executive officers, directors, or affiliates, during the last 60 days.

7. Purposes of the Transaction and Plans or Proposals.

Except as described in this Schedule 14D-9 or incorporated herein by reference, neither the Special Committee nor the Company has any knowledge of any negotiation being undertaken or engaged in by the Special Committee or the Company in response to the Offer that relates to or would result in (i) a tender offer for, or other acquisition of, Shares by CAI or Cerberus Capital, any of their respective subsidiaries, or any other person, (ii) any extraordinary transaction, such as a merger (other than the short-form merger described in the Offer), reorganization or liquidation, involving the Company or any of its subsidiaries, (iii) any purchase, sale or transfer of a material amount of assets of the Company or any of its subsidiaries, or (iv) any material change in the present dividend rate or policy, or indebtedness or capitalization of the Company.

Pursuant to a resolution of the Board, the Special Committee has been authorized, if the Special Committee deems appropriate, to solicit, consider and negotiate alternative transactions to the Offer and to approve on behalf of the Company any such alternative transaction or, if full Board approval of any such transaction is required under applicable law, recommend that the full Board approve such transaction.

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Except as described above or elsewhere in this Schedule 14D-9 or in the Schedule TO, to the knowledge of the Special Committee and the Company, there are no transactions, board resolutions, agreements in principle or signed contracts entered into in response to the Offer that relate to or would result in one or more of the matters referred to in the preceding sentence.

8. Additional Information.

Short-Form Merger.

The Schedule TO specifies that if, following consummation of the Offer, CAI owns at least 90% of the outstanding Shares, then CAI will be able to effect a short-form merger (a **Merger**) with the Company without a vote of the Company's stockholders. As permitted under the DGCL, the merger can be effected without prior notice to, or any action by, the Board or any other stockholder of the Company. According to CAI, the merger will result in each outstanding Share (other than Shares owned by CAI, or Shares, if any, held by stockholders who are entitled to and who properly exercise appraisal rights under Delaware law) being converted into the right to receive \$3.40 per share.

Appraisal Rights.

Holdings of the Shares do not have appraisal rights in connection with the Offer. However, if a short-form merger involving the Company is consummated, holders of the Shares immediately prior to the effective time of the merger will have certain rights under the provisions of Section 262 of the General Corporation Law of Delaware (**DGCL**), including the right to dissent from the merger and demand appraisal of, and to receive payment in cash for the fair value of, their Shares. Dissenting stockholders who comply with the applicable statutory procedures will be entitled to receive a judicial determination of the fair value of their Shares (excluding any appreciation or depreciation in anticipation of the Offer or any subsequent merger) and to receive payment of such fair value in cash, together with interest thereon, if any to be paid from the date of the Merger, as determined in accordance with the DGCL. Any such judicial determination of the fair value of the Shares could be based upon factors other than, or in addition to, the price per Share to be paid in the Offer or any subsequent merger or the market value of the Shares. The value so determined could be more or less than the price per Share to be paid in the Offer or any subsequent merger.

If the Offer closes and the short-form merger occurs, stockholders will be sent a separate notice of merger and appraisal rights, which will explain the steps that need to be taken to pursue appraisal rights. No action needs to be taken now. The foregoing summary of the rights of stockholders seeking appraisal rights under Delaware law does not purport to be a complete statement of the procedures to be followed by stockholders desiring to exercise any appraisal rights available thereunder and is qualified in its entirety by reference to Section 262 of the DGCL. The perfection of appraisal rights requires strict adherence to the applicable provisions of the DGCL. If a stockholder withdraws or loses his right to appraisal, such stockholder will only be entitled to receive the price per Share to be paid in the merger, without interest.

Litigation.

Following the announcement of CAI's intent to make the Offer, on July 23, 2010, an individual stockholder of the Company filed a lawsuit in the Superior Court of Fulton County, Georgia commencing a purported class action lawsuit against CAI, Cerberus Capital, the Company and each of the individual members of the Board. This complaint, styled as *Kyle Habiniak v. Howard S. Cohen, et al.* (Case No. 2010CV188733) seeks to enjoin the Offer and Merger and rescind the proposed transaction, to the extent already implemented. A notice of voluntary dismissal for this case was filed by the plaintiff on August 11, 2010.

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On July 27, 2010, an individual stockholder of the Company filed a lawsuit in the Superior Court of Cobb County, Georgia commencing a purported class action lawsuit against CAI, the Company and each of the individual members of the Board. This complaint, styled as *Joseph J. Hindermann v. BlueLinx Holdings Inc., et al.* (Case No. 10-1-7435-48), seeks, among other remedies, to preliminarily and permanently enjoin the Offer and Merger, to rescind the proposed transaction, to the extent already implemented, to impose a

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constructive trust in favor of the plaintiffs upon any benefits received by the defendants as a result of their alleged wrongful conduct, and the award of damages and attorneys' fees.

On July 30, 2010, an individual stockholder of the Company filed a lawsuit in the Superior Court of Cobb County, Georgia commencing a purported class action lawsuit against CAI, Cerberus Capital, the Company and each of the individual members of the Board. This complaint, styled as *Andrew Markich v. BlueLinx Holdings Inc., et al.* (Case No. 10-1-7591-49), seeks, among other remedies, to enjoin the Offer and Merger, to rescind the proposed transaction, to the extent already implemented, and the award of attorneys' fees.

On August 3, 2010, an individual stockholder of the Company filed a lawsuit in the Superior Court of Cobb County of Georgia commencing a purported class action lawsuit against CAI, the Company and each of the individual members of the Board. This complaint, styled as *Peter Jerszynski v. BlueLinx Holdings Inc., et al.* (Case No. 10-1-7729-48) seeks, among other remedies, to preliminarily and permanently enjoin the Offer and Merger, to rescind the proposed transaction, to the extent already implemented, to impose a constructive trust in favor of the plaintiffs upon any benefits received by the defendants as a result of their alleged wrongful conduct, and the award of damages and attorneys' fees.

On August 4, 2010, an individual stockholder of the Company filed a law suit in the Superior Court of Cobb County, Georgia commencing a purported class action lawsuit against CAI, the Company and each of the individual members of the Board. This complaint, styled as *Richard T. Winter v. Cerberus ABP Investor LLC, et al.* (Case No. 10-1-7808-48) seeks, among other remedies, to preliminarily and permanently enjoin the Offer and Merger, to rescind the proposed transaction, to the extent already implemented and the award of damages and attorneys' fees.

On August 10, 2010, an individual stockholder of the Company filed a lawsuit in the Court of Chancery for the State of Delaware commencing a lawsuit against CAI, Cerberus Capital and each of the individual members of the Board. This complaint, styled as *Stadium Capital Qualified Partners, L.P. v. Cerberus ABP Investor LLC, et al.* (Case No. 5707), seeks, among other remedies, to preliminarily and permanently enjoin the Offer and the Merger, to rescind the proposed transaction, if consummated, and the award of damages and attorneys' fees.

In general, these complaints allege, among other things: (1) breaches of fiduciary duty by CAI, Cerberus Capital and the members of the Company's board of directors in connection with the Offer and the Merger; (2) that the proposed consideration offered by CAI is inadequate; and (3) that CAI is engaging in unfair self-dealing and acting to further its own interests at the expense of Company's minority stockholders. The Company believes that these cases have no merit.

Delaware Anti-Takeover Statute.

In general, Section 203 of the DGCL prevents an interested stockholder (defined to include a person who owns or has the right to acquire 15% or more of a corporation's outstanding voting stock) from engaging in a business combination (defined to include mergers and certain other transactions) with such corporation for three years following the date such person became an interested stockholder unless, among other things, the business combination is approved by the board of directors of such corporation prior to the date such person became an interested stockholder.

Section 203 of the DGCL does not apply to a stockholder that became an interested stockholder at a time when the corporation was not publicly held. Because CAI became an interested stockholder prior to the Company's initial public offering and in any event has owned 15% or more of the Shares continuously for more than three years, the Company believes Section 203 of the DGCL does not apply to the Offer or any subsequent merger.

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Section 203 of the DGCL, however, would apply to any other person that becomes an interested stockholder during the Offer Period and the Special Committee has been authorized by the Board to approve transactions as contemplated by Section 203 of the DGCL, including transactions with any person who becomes an interested stockholder during the Offer Period.

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Regulatory Approval.

The Company is not aware of any material filing, approval or other action by or with any governmental authority or regulatory agency that would be required for the consummation of the Offer or of CAI's acquisition of the Shares in the Offer.

9. Exhibits.

Exhibit Number	Description
(a)(1)	Letter, dated August 13, 2010, from the Special Committee to the Company's stockholders.
(a)(2)	Press release issued by the Company on August 13, 2010.
(a)(3)	Press release issued by Company on July 27, 2010, announcing formation of Special Committee (incorporated herein by reference to Schedule 14D9-C of BlueLinx Holdings Inc., filed on July 27, 2010).
(a)(4)	Press release issued by Company on July 22, 2010 announcing receipt by the Board of notice from Cerberus of its intent to make a tender offer for the Shares of the Company that it does not own (incorporated herein by reference to Schedule 14D9-C).