UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
EXIDE TECHNOLOGIES, et al.,	)	
	)	Case No. 02-11125(KJC)
	)	(Jointly Administered)
Debtors,	)	
	)	
EXIDE TECHNOLOGIES, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Adversary No. 03-53030
	)	
	)	
STATE OF WISCONSIN INVESTMENT BOARD, THOMAS V. KANDATHIL, ANAND PHILIP RENDALL and THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF EXIDE TECHNOLOGIES,	)	
Defendants.	)	

BRIEF IN OPPOSITION TO DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION

The Official Committee of Equity Security Holders (the "Equity Committee"), the State of Wisconsin Investment Board ("SWIB"), Thomas V. Kandathil and Anand Philip Rendall (together, the "Defendants") respectfully submit this brief in opposition to the Emergency Motion for a Preliminary Injunction to Enjoin a Shareholder Meeting (the "Injunction Motion") filed by the Debtors.

BACKGROUND

The Court is aware of the procedural background of this matter, as well as the nature of the Debtors' operations and proceedings in chapter 11. The Defendants will therefore simply list a number of facts that are not disputed, and which will be shown at trial.

- The Debtors currently have nine directors, with three vacant board seats.
- On February 20, 2003, the Equity Committee requested in writing that the Debtors convene a shareholder meeting.
- The Equity Committee's request was made within four months following the mandatory waiting period of 13 months.
- The Debtors did not deny the Equity Committee's request for two months.
- The Equity Committee has been willing to accept a corporate governance arrangement far short of electing an entire new board.
- Some or all of Exide's existing directors authorized the acquisition of GNB Dunlop in 2000.
- Some or all of Exide's existing directors authorized the transactions with the prepetition secured lenders described in the complaint filed by the Official Committee of Unsecured Creditors, pending in this Court as Adversary No. 03-50134.
- The shareholders of Exide and the Equity Committee have filed only the following pleadings in connection with this case:
    - A motion for the appointment of an equity committee.
    - Briefs defending the order appointing the Equity Committee in both the district court and Third Circuit Court of Appeals.
    - Applications to retain lawyers and financial advisors.

- Periodic fee applications for the professionals retained by the Equity Committee.

- In September 2002, Judge John Akard made a factual finding that the shareholders in this case have a "real potential for recovery." His order directing the appointment of an equity committee, including the finding just quoted, was affirmed on appeal by the district court.

- Since the appointment of the Equity Committee, its financial advisors have gathered and analyzed financial and related information about the Debtors, sometimes through document requests, sometimes through meetings with representatives of the Debtors, and sometimes through the secured web site.

- Neither the Equity Committee nor its members or professionals has had any substantive discussions or negotiations with the Debtors or any creditor constituency about the terms of a reorganization plan.

- Neither the Equity Committee nor its members or professionals has ever demanded, requested or suggested to the Debtors or any creditor constituency any particular recovery or range of recoveries for Exide's shareholders under a plan.

- Neither the Equity Committee nor its members or professionals has ever seen a draft of a plan, a rough outline of a plan or a term sheet describing what a plan in this case might look like.

- No major constituency has agreed to a specific treatment under a plan to be filed in this case.

- There are numerous reorganization scenarios under which shareholders might be entitled to retain an interest in the Debtors, or under which other constituencies might choose to allow such a retention.

- The Equity Committee and other Defendants have no incentive to harm the Debtors or diminish their value.

- The Equity Committee and other Defendants acknowledge that any new directors elected by shareholders would have fiduciary duties to the other constituencies in this case in addition to the shareholders, and would be bound by the provisions of the Bankruptcy Code.

It is instructive to juxtapose the Debtors' argument, as condensed from their Complaint, Injunction Motion and Brief, with the objective facts just recited:

SUMMARY OF DEBTORS' ARGUMENT	***COUNTERVAILING FACTS***
Shareholders who are clearly out of the money . . .	*(Who have been relying in good faith on a finding, affirmed by the district court, that they have a "real potential for recovery")*
have been trying relentlessly to extort a disproportionate recovery from senior classes.	*(But have never demanded or requested any recovery from any creditor group, or even discussed the terms of a possible plan, a range of recovery, or shareholder treatment with any creditor group or the Debtors)*
Now, at a critical stage of the case . . .	*(When no plan has been filed, or circulated, or drafted; when no constituency has committed to any particular plan treatment; when pending litigation among creditors makes a consensual plan virtually impossible)*
the shareholders are attempting to hijack the reorganization process . . .	*(By exercising rights acknowledged by all courts to presumptively subsist during reorganization proceedings)*
with a tactically timed lawsuit.	*(Dictated by the Debtors' two-month delay in definitively denying the Equity Committee's February request for a shareholder meeting)*
The shareholders are recklessly pushing the Debtors toward liquidation . . .	*(Even though the shareholders, more than any other constituency, are dependent on a viable Debtor in order to realize some recovery)*
by trying to replace the only directors in whom creditors, customers and management will have confidence . . .	*(Directors whose decisions are at least partially responsible for the Debtors' decline into bankruptcy, and who have been accused by the unsecured creditors themselves of contriving to favor the Pre-Petition Banks at the expense of other constituencies)*
with inexperienced directors who will torpedo a widely-accepted plan . . .	*(A plan which has not been filed, circulated or even drafted, and to which no constituency has committed)*
and substitute a plan that violates the Bankruptcy Code.	*(Even though shareholders concede that new directors would be required and expected to fulfill their legal and fiduciary obligations)*

I. THERE IS A STRONG AND LOGICAL PRESUMPTION IN FAVOR OF SHAREHOLDERS CONTINUING TO EXERCISE THEIR GOVERNANCE RIGHTS DURING A REORGANIZATION PROCEEDING.

Why would the Debtors paint such an exaggerated picture of their shareholders -- portraying them as hijackers and extortionists on a mission to wreck the Debtors' reorganization? Because it's the only way to make the innocuous facts of an unremarkable case fit the very stringent standard that courts have applied when asked to enjoin shareholders from holding a meeting or electing directors -- *i.e.,* the proposed action must constitute a *"clear abuse"* of shareholder rights before a court will interfere.

The "clear abuse" standard defines an exception to the general rule that "the right of shareholders to compel a shareholders' meeting for the purpose of electing a new board of directors subsists during reorganization proceedings." *In re Marvel Entertainment Group, Inc.*, 209 B.R. 832, 838 (D.Del. 1997), *citing In re Johns Manville Corp.*, 801 F.2d 60, 64 (2d Cir. 1986). Even in bankruptcy, the right of shareholders "to be represented by directors of their choice and thus to control corporate policy *is paramount." Id., quoting In re Potter Instrument Co., Inc.*, 593 F.2d 470, 475 (2d Cir. 1979) (emphasis added).

The strong presumption in favor of shareholders continuing to exercise their governance prerogative during a reorganization case is perfectly logical. There is no rule of either corporate or bankruptcy law which suggests that being a director at the time of a bankruptcy filing creates a tenure-like entitlement. In fact, the shareholders of a bankrupt company typically have an enhanced interest in removing incumbent

directors, whose decisions may have caused or contributed to the company's financial distress, and whose ability to maximize value (for the benefit of creditors *and* shareholders) may therefore be legitimately questioned. Similarly, incumbent directors may not be totally objective in analyzing possible solutions to a debtor's financial problems, because certain corrective measures might imply past errors.

The District Court in Delaware has recognized this reality and endorsed the position held by the Second Circuit Court of Appeals for more than 65 years: Shareholders "should have the right to be adequately represented in the conduct of a debtor's affairs, *particularly in such an important matter as the reorganization of the debtor.*" *Marvel Entertainment*, 209 B.R. at 838, *quoting In re Johns-Manville Corp.*, 801 F.2d at 65, and *In re Bush Terminal Co.*, 78 F.2d 662, 664 (2d Cir. 1935) (emphasis added). Thus, the interest of shareholders in finding the right people to lead their company is not lost or diluted when bankruptcy occurs -- if anything, it is reinforced.

The Debtors claim that any directors elected by Exide's shareholders are likely to ignore the absolute priority rule and file an unconfirmable plan. D.Br. at 17. However, all directors -- incumbent or new -- have the same legal and fiduciary obligations. The Equity Committee and other Defendants absolutely concede that any directors they elect will need to act as fiduciaries for the creditors in this case (as well as to the shareholders), and must comply with every provision of the Bankruptcy Code. The Debtors have not offered a theory (much less empirical data) suggesting that petition-date directors are inherently best qualified to lead a company through a successful reorganization, or more likely than new directors to fulfill their duties properly.

Fulfillment of fiduciary duties and compliance with the provisions of the Bankruptcy Code are baseline requirements for the directors of these Debtors or any other company in Chapter 11. Beyond that common ground, there are a multitude of factors that distinguish director candidates (incumbent or new) from one another -- reputation, experience, independence, connections, intensity, objectivity, etc. Delaware corporate law assigns to shareholders the right to determine which qualities in what combinations are desirable for the job of running a company and maximizing value. Nothing in the Bankruptcy Code divests shareholders of that right, or reassigns that role to the creditors or to the incumbent directors themselves.

The notion of "incumbent tenure" is offensive to fundamental principles of corporate law, and is not compelled by some overriding policy of bankruptcy law. For these reasons, courts have uniformly ruled that shareholders presumptively should be permitted to elect the directors of their choosing during reorganization proceedings.

II. THE "CLEAR ABUSE" EXCEPTION HAS ONLY BEEN USED TO ENJOIN SHAREHOLDERS FROM ELECTING DIRECTORS IN RARE AND EXTRAORDINARY SITUATIONS, UNLIKE THE FACTS OF THIS CASE.

In the Delaware bankruptcy courts, the "clear abuse" standard requires a showing that the shareholders' action in seeking to elect a new board of directors demonstrates "a willingness to risk rehabilitation altogether in order to win a larger share for equity." *In re Marvel Entertainment Group, Inc.,* 209 B.R. 832,838 (D. Del. 1997), *quoting Johns-Manville*, 801 F.2d at 65. Simply because the shareholders' action "may be motivated by a desire to arrogate more bargaining power in the negotiation of a

reorganization plan, without more, does not constitute clear abuse." *Marvel Entertainment,* 209 B.R. at 838.

In their Brief, the Debtors have cited every case in which courts applied the "clear abuse" test to enjoin shareholders from electing new directors during a reorganization proceeding. Reviewing each of those case leaves three impressions -- the truly extraordinary facts that prompted the courts to curtail shareholder rights, the absence of any discussion or consideration of the companies' possible insolvency, and the creativity of these Debtors in trying to compare the present situation to those extreme facts.

For example, in *In re Johns-Manville Corp.*, 66 B.R. 517 (Bankr. S.D.N.Y. 1986), the bankruptcy court (on remand) found that an injunction against electing new directors was warranted to preserve a "fragile consensus" supporting a plan filed after "four years of often bitter and always arduous struggle." *Id.* at 538. The court noted that several committed constituencies would revert to prior negotiating positions if the plan were withdrawn by new directors. *Id.* at 539.

In *In re Potter Instrument Co. Inc.*, 593 F.2d 470 (2d Cir. 1979), the appellate court upheld a finding of clear abuse applied to a disgruntled shareholder's attempt to elect new directors as part of his efforts to "smash" his companies because he had been ousted from management and control. *Id.* at 474. The shareholder was partly to blame for the debtor's collapse, and had already entered into a consent decree with the SEC limiting his role in management and ability to vote his stock. *Id.*

The circumstances in *Landmark Land Company of Oklahoma, Inc.*, 134 B.R. 557 (D.S.C. 1991) are similarly extreme and inapposite. The RTC, through its powers as conservator over a parent company, became the sole shareholder of another debtor

operating in chapter 11. The RTC attempted to elect new directors for the subsidiary, who would then dismiss the reorganization case and enable the RTC to sell the assets without regard to the rights of creditors. *Id.* at 559. Understandably, the district court enjoined the RTC from carrying out its plan to completely destroy the reorganization proceeding.

Likewise, the facts of *In re Public Serv. Holding Corp.*, 141 F.2d 425 (2d Cir. 1944) are strange and unlike any aspect of the Exide case. A company that had been in receivership for many years later (and concurrently) became the subject of an involuntary bankruptcy petition. The Second Circuit concluded that the district court had properly enjoined a shareholders meeting to preserve the status quo until it could be determined whether the involuntary petition would be approved or dismissed. *Id.* at 426.

The Exide case brings none of the rare elements that have prompted courts to intervene in corporate governance matters -- no fragile consensus, no ground-breaking plan reflecting four years of arduous negotiations, no spiteful individual owners, no overreaching government agency, no questionable involuntary petitions. The Debtors have only complained about distraction, and made vague and conclusory statements about employees, creditors and customers all being spooked by the mere possibility of new directors being introduced into this case.

Indeed, the case involving allegations most closely comparable to those by the Debtors is *In re Saxon Industries*, 488 A.2d 1298 (Del. 1984). The debtor in *Saxon* complained that a proxy fight would be expensive, might cause the loss of employees or curtailment of credit, and could potentially frighten away an interested purchaser. The Chancery Court concluded, and the Delaware Supreme Court affirmed, that those

concerns were "born of supposition" and did not justify denying a shareholder meeting. *Id.* at 1302.

III. THE DEBTORS' ALLEGED INSOLVENCY IS NOT GROUNDS FOR ENJOINING THE ELECTION OF NEW DIRECTORS, NOR DOES IT MITIGATE APPLICATION OF THE "CLEAR ABUSE" EXCEPTION.

As pointed out in the Defendants' brief in support of their motion in limine to exclude valuation evidence, there is no reported decision in which a court has enjoined shareholders from convening a meeting or electing directors because the debtor was insolvent. In their opposition to the motion in limine, the Debtors concede the absence of such authority, and again rely on dictum from the Second Circuit for support. They also assert the absence of contrary authority -- *i.e.*, the Debtors claim that no court has ever ruled that insolvency is insufficient grounds to terminate the governance rights of shareholders.

In fact, a court has ruled that under Delaware law, a company's insolvency does not end the right of shareholders to elect new directors -- directors who might be able to lead the company back into solvency. In *Saxon Industries, Inc. v. NKFW Partners*, 488 A.2d 1298 (Del. 1984), the Delaware Supreme Court struck a balance between the Bankruptcy Code and state corporate law. The *Saxon* court reiterated that the right to convene a shareholder meeting under section 211(c) of the Delaware General Corporation Law was virtually absolute. *Id.* at 1301. The court also concluded that "[a]bsent other compelling legal or equitable factors, insolvency alone, irrespective of degree,

d[oes] not divest shareholders of a Delaware corporation of their right to exercise the powers of corporate democracy." *Id.* at 1300.[1]

The *Saxon* decision is a definitive statement of Delaware corporate law: The shareholders of an insolvent Delaware company may continue to govern that company in hopes of returning it to financial health. If the Debtors want a different rule applied to Exide, it is incumbent on them to identify not only a source of such a rule, but also a reason why it should be used to overrule Delaware state law on the subject.

Given the absence of case law supporting their position, the Debtors fashion the novel argument that a company's insolvency causes shareholders to lose their stake in the company's future, so it is a per se "abuse" to take any steps to protect a non-existent interest. This theory is first asserted in skeletal form in the Debtors' Brief supporting their Injunction Motion, D.Br. at 17-18, but is repeated and fleshed out in their opposition to the motion in limine. *See* Opp. at 12-13.

Ironically, the theory follows pages of argument by the Debtors to the effect that determinations of solvency and value "may be made many times for many different purposes in a single bankruptcy case" and "time is a necessary component of solvency" and new developments can make the issue of solvency "different" over the span

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[1] In their injunction brief, the Debtors try to distinguish *Saxon* on the grounds that the shareholders in that case first went to bankruptcy court before resorting to the Chancery Court. D.Br. at 12. Such an indirect route might once have been a sign of deference to the bankruptcy court, but it has ceased to be necessary. Barely two months ago, the Chief Bankruptcy Judge in this district advised a *pro se* litigant that he could seek a shareholders meeting to elect a new board of directors in "the Court of Chancery of the State of Delaware, [because] this is not the Court to address that." *See* Partial Transcript of Omnibus Hearing Before Honorable Peter Walsh, March 5, 2003, *In re Polaroid Corporation*, at pp. 122-3. (Attached as Exhibit A).

of a few months. The Debtors are somehow able to ignore their own teachings, and contend that based on a time-sensitive determination of insolvency *now* "shareholders have no economic interest in the *future* affairs" of the company.

That argument is a *non sequitur*. A determination of time-specific (*i.e.*, temporary) insolvency may mean that shareholders have lost their right to a distribution in an immediate liquidation, but it does not follow that shareholders are also stripped of their separate and distinct rights to decide who is best qualified to fix the situation. In good times or bad, shareholders of a company have a profound interest in influencing the creation of future value. Neither logic nor any rule of law mandates that shareholders of an insolvent company must be precluded from taking steps to reverse the company's financial woes and return it to solvency.

The Debtors also contradict their own "time-specific" theory of valuation by taking the absolute priority rule -- an end-of-the-case requirement for confirmation of a plan -- and converting it into an up-front shield against shareholders participating in negotiations or corporate governance. They ignore the fact that the absolute priority rule is not really absolute -- for a variety of reasons (other than "extortion"), creditors could accept a proposed treatment that allows shareholders to retain an interest in the reorganized debtors. Or, a plan might take advantage of the "New Value Exception," enabling the Debtors to raise capital by affording shareholders the right to buy back in.

The incumbent directors apparently believe that (a) a plan confirmation requirement excuses the Debtors throughout the case from even exploring plan options with the shareholders, and (b) since shareholders have no role in the negotiations and are

predestined to receive nothing under a plan, they are also stripped of their ability to remove the directors who may be applying the absolute priority rule erroneously and/ or prematurely. That reasoning alone justifies the convening of a shareholder meeting to elect new directors.

Finally, the Debtors are promoting their "solvency is a threshold issue" argument as a good (albeit heretofore unused) rule from a policy perspective, which this and other courts *should* start using. But the argument is lacking the one advantage by which policy-based rules can be judged -- common sense. Before adopting a rule that no other court has used, this Court should consider which of the following scenarios actually makes sense:

>> The directors who presided over a company's affairs as it declined into bankruptcy should be granted automatic tenure and protected from distracting shareholder efforts to replace them, because those directors are presumed to be well qualified to reorganize the company and are more likely than any others to comply with bankruptcy law.

>> Shareholders who have suffered a present loss in the economic value of their investment nevertheless retain their fundamental right to elect those directors who, in the shareholders' judgment, are most likely to return the company to a state of solvency, while discharging their fiduciary duties and complying with bankruptcy law.

The answer is obvious. One might even suppose that a common sense analysis of the two alternatives explains why there are no cases in which courts have ruled that shareholders lose their right to elect directors whenever the company is insolvent.

IV. SECTION 303 OF DELAWARE GENERAL CORPORATION LAW DOES NOT SUPERSEDE SECTION 211 IN THIS CASE.

The Debtors also argue that section 303 of Delaware General Corporation Law gives a reorganizing debtor plenary authority over the composition of its own board, superseding the rights of shareholders in section 211. Section 303 is a "reorganization yielding statute" common to many states, designed for two purposes: To facilitate the changes in corporate structure and control that occur when a plan of reorganization is confirmed or being confirmed, and to recognize the power of bankruptcy courts to give shareholder-like powers to the trustees and other individuals they appoint.

Again, the Debtors interpret the law in a way that supposedly gives petition-date incumbents unfettered discretion to decide whether they wish to continue governing a debtor's affairs and, if not, to hand pick their own replacements. *See* D.Br. at 9 ("the composition of a board is left to the sound (and sole) business judgment of a debtor [*i.e.*, the board]").

The few cases interpreting section 303 do not go so far. Section 303 has not been applied as a tool for entrenchment, but as a mechanism for filling governance voids and validating the acts of court-appointed managers. For example, in *In re FSC Corp.*, 38 B.R. 346 (Bankr. W.D. Pa. 1983), the court appointed a designated officer when the directors of the debtor and its subsidiaries all resigned. The court relied in part on section 303 to authorize the designated officer to vote the shares of the debtor's subsidiaries. *Id.* at 347-8. Shareholders did, in effect, lose their power to elect new directors -- but they lost that power to a *court-appointed officer* picked to fill a void in

the corporate governance. That's a far cry from shareholders losing their rights to corporate democracy based on the unilateral determination by an incumbent board that they (the directors) are performing nicely and have decided to stay put.

In re United Press International, Inc., 60 B.R. 265 (Bankr. D.C. 1986) is similar. The rights of shareholders to elect directors were not subordinated to an entrenched board, but to an individual officer *designated by the bankruptcy court* to manage the debtor's business affairs.

The Equity Committee and other Defendants do not dispute that this Court, if it so desired, could appoint a trustee or a designated person to have full and exclusive authority to run the Debtors' business. Were that to occur, section 303 (and probably other provisions) would surely prevent Exide's shareholders from attempting to oust that individual or circumvent his authority by electing directors.

The Debtors interpret this Court's plenary power to designate managers with full corporate authority as including the lesser power to enjoin a shareholder meeting for any reason whatsoever, without reference to the strong presumption in favor of continued shareholder governance or the very limited exception for "clear abuse." The cases applying section 303 have not been used in that fashion. This Court should resist the Debtors' invitation to begin electing or protecting particular directors as an open-ended subset of the Court's authority to appoint trustees or designated officers.[2]

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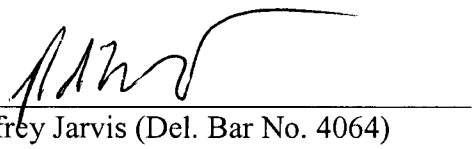
[2] The Debtors' other case in which section 303 was used to enjoin the election of directors is *Matter of Federated Dept. Stores, Inc.*, 133 B.R. 886 (S.D. Ohio 1991). In that case, the right to elect shareholders was not organic but contractual. The district court affirmed the bankruptcy court's injunction in order to protect the estate against a $234 million tax liability if

CONCLUSION

For the foregoing reasons, the Defendants respectfully request that the Court deny the Plaintiffs' Motion For a Preliminary Injunction.

Dated May 9, 2003

GRANT & EISENHOFER, P.A.



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preferred shareholders exercised their contractual right to elect directors triggered by the debtor's failure to pay dividends. The court distinguished its own decision from cases involving "the rights of shareholders which vested prior to the petition in bankruptcy." *Id.* at 892. The *Federated Dept Stores* case therefore has no precedential value with respect to the interplay between sections 211 and 303 of Delaware General Corporation Law.

Certificate of Service

I, P. Bradford deLeeuw, an attorney, certify that I served a true and correct copy of the foregoing Brief In Opposition To Debtor's Motion For A Preliminary Injunction on May 9, 2003, via facsimile, upon:

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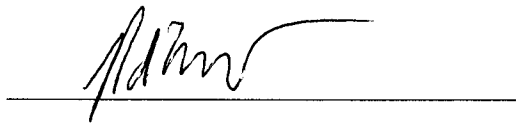

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	)	Case No. 01-10864
	)	Chapter 11
POLAROID CORPORATION,	)	
et al.,	)	Courtroom No. 2
	)	824 Market Street
Debtors.	)	Wilmington, Delaware 19801
	)	
	)	March 5, 2003
	)	9:43 A.M.

TRANSCRIPT OMNIBUS HEARING
BEFORE HONORABLE PETER J. WALSH
UNITED STATES CHIEF BANKRUPTCY JUDGE

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opportunity to submit and even were ignored, at least in the case of J.P. Morgan, which represents probably the largest economic creditor in this case, that is not correct. Like everybody else, and as Mr. Kenney outlined the process, we got an e-mail and a phone call saying do you have anyone you'd like to suggest. We sent in one name, and more or less the next we heard was who they had appointed.

So, just -- since people are inferring to the contrary, I felt it very important that at least from our perspective, the Judge understand what the facts are.

THE COURT: Okay. Let's go to the next item.

MR. DESGROSSEILLIERS: Your Honor, the next item on the agenda is Matter 15. It's Mr. Morgan's motion again for a -- it's a verified motion for a shareholder meeting and a number of other things that he seeks, including a proxy, removal of the current Board of Directors and President Kevin Pond, appointment of himself as Trustee until completion of meeting and elections. And in the order and in the motion, he seeks up to $50,000 to conduct a proxy or to hire a firm big enough to proxy.

Again, the debtors and the U.S. Trustee have serious and, you know, real serious reservations regarding the way this motion was filed and the service of the motion. I'd like to address the procedural objections very quickly and dispose of the motion.

MR. MORGAN: If I may for the record, Your Honor, based on the previous --

MR. DESGROSSEILLIERS: Identify yourself.

MR. MORGAN: Steve Morgan. Based on the previous discussion, it seems very clear that this motion is headed in the same direction as the other ones and we should probably just move on at this point, unless there's some purpose in not going that direction. I think you were very clear on the earlier procedural issues, it's the same circumstances.

THE COURT: Okay. I think it is procedurally defective. But I'm going to make a couple of observations with respect to the merits of this motion. And I'll just refer to the prayers for relief in Mr. Morgan's motion, Docket Number 2200. I says, "Wherefore Morgan requests the following relief," Paragraph 8, "The removal of current directors and their appointed consultant President, Kevin Pond, from the control of the affairs of the primary PDC, Inc."

This Court does not have authority to remove directors. If I think the directors and the management are not properly discharging their duties under the Code, then it's time to either dismiss the case or appoint a trustee, or appoint an examiner. We've done the latter. I have authority to remove the Board of Directors.

Next request is appointment of Stephen J. Morgan as Trustee for the affairs of the debtor until the completion of

the shareholder elections.

I have no authority to appoint anyone as a trustee. I have authority to direct the appointment of a trustee. And as we are well aware, the U.S. Trustee has the authority to select the trustee.

And for obvious reasons, you wouldn't be selected because you are an interested party.

The last request is for approval for Morgan to use $50,000 of the estate's funds in connection with retention of a proxy firm. I don't know what basis there would be for me to allow the use of estate funds for a party to pursue its own parochial interest versus the interest of the estate. But that leads me to this comment. And I haven't looked at this issue for -- I think I first looked at this issue when I came on the bench almost ten years ago. And I'll make what I believe is the law, but I'm not sure of it because I haven't looked at it for a long time.

I don't think the existence of this bankruptcy case precludes a shareholder from going to court, specifically the Chancery Court of the State of Delaware, requesting the Court to direct the debtor to conduct a meeting of shareholders to elect directors. And I don't think that constitutes a violation of the stay order. I think the shareholders have that right and if you want to have a shareholders' meeting to elect a new Board of Directors and you think that it's

appropriate to do so, you can seek appropriate relief from the Court of Chancery of the State of Delaware. This is not the Court to address that.

Now, when I say it's not the Court to address that, the one occasion where I did address this issue was a case where application was made in this Court, as well as the Chancery Court, and as a result of an agreement between me and a Vice Chancellor, we allowed the matter to proceed in this Court. But that's not a requirement of the law as far as I'm concerned, that's a disposition that we worked out in the interest of everybody involved.

But if you want a new Board of Directors to run this company, I think you're entitled to pursue relief in the Court of Chancery.

MR. MORGAN: Thank you, Your Honor. Just as a clarification, is that -- are your comments to indicate that in your view that a stay to pursue that action is not necessary? Or that you would grant such a stay if it's deemed necessary?

THE COURT: No. What I was saying is I do not believe that a shareholder pursuing that relief in the Court of Chancery constitutes a violation of the automatic stay order under Section 362(a).

MR. MORGAN: Okay.

THE COURT: For the simple reason that shares of the debtor is not property of the estate.

MR. MORGAN: Okay. I obviously have come to the wrong place for the request.

Thank you.

THE COURT: Okay.

MR. GALARDI: Your Honor, that actually concludes the matters on the agenda. But I wanted to try to not wait until April 15th on two things:

One, obviously with respect to your comments, we understand the law. And we reserve our rights with respect to staying any such action if we think it's appropriate.

And I don't want to -- Your Honor has been incredibly patient. But I think we can resolve one of Mr. Morgan's issues with what he keeps coming up, the two -- the 2004 exam and the documents by one simple sentence, I hope. Your Honor, Mr. Morgan has executed -- it's not on the agenda.

THE COURT: Okay.

MR. GALARDI: I'm trying to actually shortchange the next hearing because we go six weeks and we may have a lot more pleadings if we don't do this right now. If Your Honor doesn't want to do it, I think we might be able to resolve something very -- within a minute.

THE COURT: All right.

MR. GALARDI: Believe it or not. Thirty seconds running. Mr. Morgan has executed the confidentiality agreement. We are prepared and have the documents prepared to