IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
SEA CONTAINERS, LTD., et al.,	)	Case No. 06-11156 (KJC)
	)	
Debtors.	)	Jointly Administered
	)	

Re: Docket Nos. 134, 168 & 169

GE'S REPLY TO OBJECTIONS TO MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH ARBITRATION

GE Capital Container SRL and GE Capital Container Two SRL (together, "GE") hereby reply to the objections (the "Objections") filed by Sea Containers Ltd. ("SCL") and the Official Committee of Unsecured Creditors (the "Committee" and together with SCL, the "Objectors") to GE's Motion for Relief from the Automatic Stay to Proceed with Arbitration (the "Motion"), as follows:

PRELIMINARY STATEMENT[1]

1. SCL and the Committee have consented to stay relief to arbitrate the Change of Control Dispute. GE will defer its request for stay relief to arbitrate the Valuation. Accordingly, one issue remains: whether, at the request of SCL and the Committee, this Court has the discretion to recraft the question presented by GE in arbitration from "whether a Change in Control occurred at SCL that triggers GE's purchase rights" to "whether events occurring on or after February 17, 2006 constitute a Change of Control."

2. In seeking to rewrite the question in this manner, SCL and the Committee are actually asking this Court to decide the underlying merits of the Change of Control Dispute and to restrict the evidence and legal arguments that GE may make to the arbitrator. The law is

[1] Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

clear, however, that it is up to the arbitrator to decide the merits of GE's arguments and which evidence should be considered in weighing those arguments.

3. The facts and the law are straight forward and clear:

> (i) Article IX of the Omnibus Agreement provides: "***Any dispute, controversy or claim … arising out of or relating to this Agreement or the validity, interpretation, breach or termination hereof ….(a "Dispute") including, without limitation, claims seeking redress or asserting rights under applicable law shall be resolved" by arbitration*** pursuant to the CPR Rules for Non-Administered Arbitration of International Disputes. Section 7 of the Members' Agreement (together with the Omnibus Agreement and the Articles of Organisation, the "JV Documents") contains similar language that directly addresses disputes arising out of or related to the Members' Agreement (together with Article IX of the Omnibus Agreement, the "Arbitration Provisions").[2]
>
> (ii) By letter, dated September 25, 2006, GE notified the SCL Members that a Change of Control occurred at SCL and that GE was exercising its right to purchase the entire equity interest held by the SCL Members in the JV (the "Exercise Notice").
>
> (iii) On October 2, 2006, SCL informed GE that SCL did not agree that a Change of Control had occurred. As of the date hereof, GE and the SCL Members continue to dispute the occurrence of a Change of Control.
>
> (iv) Under the Third Circuit's recent decision in *Mintze v. Am. Gen. Fin. Servs., Inc. (In re Mintze)*, 434 F.3d 222 (3d Cir. 2006), this Court has ***no judicial discretion*** to deny arbitration even if the arbitration involves core proceedings under 11 U.S.C. § 157(b).
>
> (v) Under the Third Circuit's decision in *Medtronic Ave., Inc. v. Advanced Cardiovascular Sys., Inc.*, 247 F.3d 44, 55 (3d Cir. 2001), in determining the applicability of an arbitration agreement where the parties, as here, have agreed to submit all questions under the contract to arbitration, the Court's function "is ***confined to ascertaining whether the party seeking arbitration is making a***

[2] In fact, the Arbitration Provisions in both agreements are equally applicable to the dispute here because both cover disputes between "Transaction Parties" regardless of whether the dispute involves the particular agreement. Section 7.01 of the Members' Agreement provides: "Any dispute…arising out of or relating to this Agreement…or the validity, interpretation, breach or termination hereof…including, without limitation, claims seeking redress or asserting rights under [a]pplicable [l]aw, shall be resolved" by arbitration.

> ***claim which on its face is governed by the contract.***" (emphasis added) (citations omitted).

4. Here, the Arbitration Provisions require arbitration of ***all disputes*** arising out of or relating to the JV Documents and it is uncontroverted that the JV Documents govern the Change of Control Dispute. Accordingly, ***all the legal and factual issues*** in connection with the Change of Control Dispute must be arbitrated and this Court has no discretion to exclude from the arbitration evidence and legal arguments as requested by the Objectors.

5. Astonishingly, SCL's Objection does not cite any of the controlling caselaw on this Court's power to limit the scope of arbitration and, and in arguing this issue, ***never refers to the Arbitration Provisions***, the only provisions that this Court must interpret to determine the scope of arbitration. Faced with this Court's lack of discretion to limit the scope of arbitration, SCL seeks to accomplish indirectly what it can't do directly by asking this Court to circumvent *Mintze* and *Medtronic* ***by fashioning stay relief*** in such a way as to (i) predetermine the merits of potentially key arbitrable issues, (ii) restrict GE's right to conduct discovery and make legal arguments, and (iii) restrict the evidence and the law that the arbitrator may consider. SCL asks this Court to defy binding precedent and turn the principle of stay relief on its head without citing a single case that supports the relief it requests.

ARBITRATION OF THE CHANGE OF CONTROL DISPUTE

This Court's Authority to Determine the Scope of Arbitration

6. This Court's role is limited to determining if the Change of Control Dispute falls within the scope of the arbitration clause. The Court has no power to limit the scope of arbitration or restrict the arguments GE may make in arbitration and/or the evidence and law the arbitrator may consider. As noted above, SCL fails to even discuss the legal standards governing this Court's authority to determine the scope of arbitration. The Committee correctly

states the legal standard: A court is empowered to determine "***whether a particular dispute falls within the scope of the arbitration clause.***" (citation omitted) (emphasis added). Committee Objection, ¶ 6.

7. Notwithstanding the Committee's recognition of the correct legal standard, the Committee asks this Court to restrict the scope of arbitration based on the Committee's view of the merits, ***not on the scope of the Arbitration Provisions***. The Committee asks this Court to consider GE's Exercise Notice (which states that a Change of Control occurred) and an amendment to Section 6 of the Articles of Organisation (Purchase Rights) and argues, hypothetically, that if GE were to assert a Change of Control occurring before February 17, 2006, such an assertion would be time barred. Committee Objection, ¶ ¶ 8-10. The Committee fails to explain why the hypothetical dispute over notice period does not fall "*within the scope of the arbitration clause*" as required by the legal standard the Committee itself stated.

8. The Arbitration Provisions provide that ***any dispute, controversy or claim arising out of or relating to JV Documents or their validity, interpretation, or breach including claims asserting rights under applicable law shall be resolved by arbitration.*** *See* Members' Agreement, Section 7.01(a); Omnibus Agreement, Section 9.1(a). (The Members' Agreement and the Omnibus Agreement are attached to GE Capital Motion For Relief From Stay as Exhibits D and B, respectively). The Parties agree that the JV Documents govern the Change of Control Dispute. However, the Committee asks the Court to ignore the Arbitration Provisions and restrict the arbitration to "events relating to Mr. James Sherwood that occurred since February 17, 2006." Committee Objection, ¶ 7.

9. As noted above, the Committee ignores the clear and unambiguous Arbitration Provisions (which are the only provisions of the JV Documents relevant to the scope

of arbitration determination). Instead, the Committee asks this Court to consider the merits of the dispute and make a determination of GE's rights under the operative provisions of the JV Documents, precisely what the Parties agreed would be determined by arbitration. Under binding caselaw, the Court cannot make that determination. If this Court finds the dispute falls within the scope of the arbitration provision, it ***must*** submit the matter to arbitration ***without ruling on the merits of the case.*** *Medtronic Ave.*, 247 F.3d at 55; *Beck v. Reliance Steel Prods. Co.*, 860 F.2d 576, 579 (3d Cir. 1988) (emphasis added).[3]

10. Moreover, where, as here, the Parties have agreed to submit all questions of contract interpretation to arbitration, the Court's role is limited to "ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract." *Medtronic Ave., Inc.*, 247 F.3d 44, 55 (quoting *United Steelworks of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 567-68 (1960)). And where, as here, phrases such as "arising under" an agreement appear in arbitration provisions, such evidence "overwhelmingly suggests that a given dispute is arbitrable." *Port Erie Plastics, Inc. v Uptown Nails, LLC*, 350 F. Supp. 2d 659, 665 n.8 (W.D. Pa. 2004) (quoting *Battaglia v. McKendry*, 233 F.3d 720, 727 (3d Cir. 2000)).

11. Any doubts about the scope of an arbitration agreement must be resolved in favor of arbitration. *Seus v. John Nuveen & Co., Inc.*, 146 F.3d 175, 186 (3d Cir. 1998) (adopting the language of the Tenth Circuit in *Armijo v. Prudential Ins. Co. of Am.*, 72 F.3d 793, 798 (10th Cir. 1995) "'to acknowledge the ambiguity is to resolve the issue, because all ambiguities must be resolved in favor of arbitrability'"); *PaineWebber Inc. v. Hartmann*, 921 F.2d 507, 511 (3d Cir. 1990); *Stateside Mach. Co. v. Alperin*, 591 F.2d 234 (3d Cir. 1979).

[3] This is true even if the underlying claims of a party's position appear to be frivolous. *Id.* (citing *AT&T Techs. Inc. v Commc'ns Workers of Am.*, 475 U.S. 643, 643 (1986)). GE's Motion demonstrates that these claims are serious and substantial.

These include scenarios in which the party opposing arbitration asserts a defense such as waiver or delay. *Svedala Indus., Inc. v. Rock Eng'rd Mach. Co., Inc.*, No. 96-4538, 1996 LEXIS 15163 at *8 (E.D. Pa. Oct. 11, 1996) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24-25 (1983)).

This Court Cannot Fashion Stay Relief to Restrict the Arguments GE May Assert and/or the Evidence and Law the Arbitrator May Consider

12. Sidestepping the binding caselaw regarding determination of the scope of arbitration, SCL contends that this Court has unbridled authority to fashion stay relief that determines the merits of the arbitrable dispute and restricts GE's rights in arbitration and the law and evidence that the arbitrator may consider. SCL correctly notes that a bankruptcy court has authority to grant or deny relief from the stay to proceed with litigation. If a party or multiple parties request relief from the stay on various disputes, a court may grant relief from the stay to one or more parties on one or more disputes and deny relief from the stay to other parties or on other disputes. A bankruptcy court may, in some circumstances, deny relief from the stay on a particular issue because the timing is wrong or because the bankruptcy court finds that the dispute should be resolved in bankruptcy court, an option not available to this Court here because of the Arbitration Provisions and controlling caselaw. However, a bankruptcy court ***cannot decide the merits of a dispute in a motion to lift stay***. *In re Waste Alternatives, Inc.*, 171 B.R. 147, 148 (Bankr. M.D. Fla. 1994) (holding that during a motion to lift stay, the court will not allow nonmovant to present evidence, or decide the merits, of the defense that a lien is invalid). And this Court cannot, as proposed by SCL, fashion stay relief to circumvent *Mintze* by rephrasing the question to be arbitrated so as to control the arbitrator's decision on the evidence to be heard and the merits of a given argument.

13. Every case SCL relies on to support its erroneous proposition is inapposite, misstated, and/or irrelevant.

i) For example, SCL cites *In re Bicoastal Corp.*, 111 B.R. 999 (Bankr. M.D. Fla. 1990). In *Bicoastal*, the Court modified the stay to permit the movant "to proceed with the arbitration [of the contract price adjustment dispute] called for by the Agreement." *Id*. at 1003. The court did not authorize arbitration to proceed for matters involving fraud or the validity of the balance sheet itself because those issues "were not controlled by the provision dealing with arbitration …." *Id*. at 1000. In other words, the court in *Bicoastal* simply determined the applicability of the specific arbitration provision to the different disputes.

ii) SCL also cites *Garland Coal & Mining Co. v. United Mine Workers of Am.*, 778 F.2d 1297 (8th Cir. 1985). In that case, the Eighth Circuit affirmed the district court's finding that the debtor is obligated under the arbitration provisions of its expired labor agreement to arbitrate pre-expiration grievances but not obligated under the expired labor agreement to arbitrate post-expiration grievances. As in *Bicoastal*, the *Garland* court simply determined the applicability of the arbitration provision to the different disputes.

iii) *In re Zimmerman*, 341 B.R. 77 (Bankr. N.D. Ga. 2006) is cited by SCL because the court granted relief from the stay to allow arbitration of claims against the debtor but retained jurisdiction to determine whether the claims are dischargeable. *See* SCL Objection, p. 20. The *Zimmerman* decision does not provide a scintilla of support to SCL's contention that this Court can redraft the arbitration question to circumscribe GE's rights or restrict the evidence and law the arbitrator may consider. Moreover, the movant in *Zimmerman* ***did not request arbitration of the dischargeability issue***. The only issues considered by the court in *Zimmerman* were whether to allow arbitration to proceed and, if allowable, whether the arbitration should proceed before or after the Court determined dischargeability. The court answered both questions affirmatively. *Id*. at 78.

d) In *In re Quad Sys. Corp.*, No. 00-35667F, 2001 WL 1843379 (Bankr. E.D. Pa. March 20, 2001), another case relied on by SCL, the court modified the automatic stay to permit an arbitration proceeding to continue to resolve disputes under a licensing agreement. The Court allowed the arbitration to proceed because the "claims could have existed outside of bankruptcy and are not based on any right created by the federal bankruptcy law." *Id*. at *8. The Court further held that it would retain jurisdiction to apply section 365(n) of the Bankruptcy Code because the

resolution of the licensee's rights under section 365(n)(1) was outside the scope of arbitration. *Id*. at *15.

14. SCL fails to cite a single case that supports its contention that this Court has the power to use section 362 of the Bankruptcy Code to circumvent the FAA, *Mintze*, *Medronic*, and *Beck*. Simply put, this Court may not decide the merits of an arbitrable issue and restrict the rights of GE in arbitration and/or restrict the evidence and the law that the arbitrator may consider in determining the Change of Control Dispute, an arbitrable dispute under the Arbitration Provisions.

The Letter Amendment and Amendment No. 6 are Red Herrings

15. SCL attempts to make much of a letter, dated September 5, 2006 (the "Letter Amendment"), pursuant to which the Parties amended the Members' Agreement. Under the Letter Amendment and Amendment No. 6 to the Members' Agreement ("Amendment No. 6" and together with the Letter Amendment, the "Amendments"), SCL claims that GE agreed that only events occurring after February 17, 2006 can be the basis for an Exercise Notice. *See* SCL Objection, p. 15. Nothing could be further from the truth.

16. SCL would have this Court believe that GE avoided discussion of the Amendments in the Motion and failed to attach them as exhibits to the original filing because of concern that the Amendments harm its case. In fact, as part of Exhibit C to its Motion, GE filed a parallel amendment to the Articles of Organisation with identical language to the Amendments. As SCL is well aware, the Amendments were not filed due to a clerical error[4] and SCL's

[4] SCL's objection misrepresents discussions among counsel before the December 5, 2006 hearing, stating that "GE Capital's counsel belatedly offered to include in its filing" the Amendments, implying that there had been a discussion regarding the absence of the Amendments from the filing. *See* SCL Objection, p. 15 fn.8. In fact, GE's attorneys raised the subject on their own and informed SCL's attorneys that GE had just discovered that the Amendments were not filed due to a clerical error and that GE would file them as a supplement to the Motion. There was no "belated offer" or even discussion of this issue. On December 7, 2006, GE filed the Amendments together with certain other documents.

innuendo to the contrary is outrageous. GE did not discuss the Amendments in the Motion simply because they are irrelevant to the issue before the Court – whether the Court should modify the automatic stay to permit GE to proceed with arbitration of the Change of Control Dispute because the Change of Control Dispute is ***arbitrable under the Arbitration Provisions.***

17. SCL spends over 5 pages of its Objection arguing the substantive legal rights of GE under the Amendments – attempting to convince this Court that, based on the Amendments, GE cannot successfully assert a Change of Control based on events occurring before February 17, 2006. However, the question of GE's Change of Control rights under the JV Documents is an arbitrable issue under the Arbitration Provisions. As set forth in the Motion, in the context of a motion for stay relief, the Court should not conduct a mini-trial on the merits, in particular where the moving party is seeking relief from the automatic stay to arbitrate.

18. SCL's objection is even more suspect because GE has not asserted that a Change of Control occurred prior to February 17, 2006. GE asserts that a Change of Control occurred on or about March 20, 2006. In the course of the proposed arbitration, GE may conduct discovery with respect to, *inter alia*, the nature of Sherwood's control of SCL, the events surrounding his relinquishment of control, and the acquisition of control by other person(s). If the facts demonstrate that a Change of Control occurred prior to February 17, 2006 and SCL did not adequately disclose the facts constituting the Change of Control, GE reserves the right to assert that, with respect to the deadline for its Exercise Notice, the clock does not begin to run until the relevant facts were disclosed. Indeed, as set forth below, the Members Agreement, *as amended by the Amendments*, ***expressly preserves GE's right to make that assertion***.

19. In the guise of asking the Court to determine the scope of the Arbitration Provisions, SCL and the Committee are actually seeking to have the Court deprive GE of its

substantive contractual rights before GE has an opportunity to conduct discovery in accordance with the Arbitration Provisions before the arbitration even commences. SCL would like to tell the arbitrator – "yes, a Change of Control occurred but it was prior to February 17, 2006 and we concealed it. But, despite the clear language of the Members' Agreement, you cannot consider whether that concealment affects the running of time and GE loses automatically." Under *Mintze* and *Medtronic*, the Court does not have the discretion to decide the merits of the hypothetical timing/disclosure issue or to limit the scope of the arbitration in this manner.

20. As noted, the Amendments are irrelevant to the Court's decision because the Parties have agreed to ***arbitrate all disputes*** under the Arbitration Provisions. The Court's role is limited to a determination if a dispute is within the scope of the Arbitration Provisions. The Amendments do ***not*** amend the Arbitration Provisions. Nonetheless, because SCL devoted over 5 pages to the Amendments, GE is providing a brief response.

21. SCL cites the following from the Letter Amendment and Amendment No. 6 respectively:

> To permit the parties to consider further their positions, it is agreed that the period for delivering the Exercise Notice (as defined in Section 6.2 of Part 7, as incorporated in Schedule III, of the Articles and in Section 5.06(b) of the Members' Agreement) with respect to any Change of Control occurring on or after February 17, 2006 and on or before May 15, 2006, is extended so it will terminate on November 15, 2006 rather than six months from such alleged Change of Control.

SCL Objection, p. 12-13 (quoting Letter Amendment).

> The period for delivering the Exercise Notice (as defined in Section 5.06(b)) with respect to any Change of Control as defined in Section 5.06(a) with respect to SCL (a "Subsection (e) Change of Control") occurring on or after February 17, 2006 and on or before May 15, 2006 is extended so it will terminate on November 15, 2006 rather than six months from such alleged Subsection (e) Change of Control. Nothing in this Section 5.06(e) shall constitute an admission by SCL that such a Subsection (e) Change of Control has occurred; ***nor will anything in this Section 5.06(e) prejudice either party in the determination thereof.***

Id., p. 13. (quoting Amendment No. 6) (emphasis added).

22. However, SCL conveniently omits the following provisions from the Letter Amendment and Amendment No. 6 respectively:

> Nothing in this letter shall constitute an admission by SCL that such a Change of Control occurred; nor will anything in this letter prejudice either party in the determination thereof. Furthermore, it is agreed that ***nothing herein shall preclude the GE Capital Members from asserting that the period during which an Exercise Notice may be delivered*** (except as provided in this letter) ***does not expire until six months after the facts constituting the Change of Control are disclosed publicly or to the GE Capital Members.***

Letter Amendment (emphasis added).

> ***Nothing in this Section 5.06(e) shall preclude GE Capital Member Group from asserting that the period during which an Exercise Notice may be delivered (except as provided in Section 5.06(e)(i)) does not expire until six months after the facts constituting the Subsection (e) Change of Control are disclosed publicly or to the GE Capital Member Group.*** To the extent it is determined that the period during which an Exercise Notice may be delivered (except as provided in Section 5.06(e)(i)) does not expire until six months after disclosure of such facts has been made and such disclosure of such facts was made on or after February 17, 2006 and on or before May 15, 2006, the period for delivering an Exercise Notice with respect to the Subsection (e) Change of Control resulting from such facts shall be extended so it will terminate on November 15, 2006.

Amendment No. 6 (emphasis added).[5]

23. A complete reading of the Amendments makes absolutely clear that the Amendments have no effect on GE's right to assert that the clock does not start running on the time period for the Exercise Notice until SCL discloses the facts of the Change of Control. Indeed, SCL admits this in its Objection: "The parties included a provision in Amendment No. 6 stating that ***Amendment No. 6 had no effect one way or the other on any argument 'that the period during which an Exercise Notice may be delivered … does not expire until six months after the facts constituting the … Change of Control are disclosed publicly or to the GE***

[5] SCL buries a portion of the omitted provision of section 5.06(e) of the Members' Agreement (Amendment No. 6) in footnote 8 three pages later. SCL never cites the relevant portion of the Letter Amendment.

Capital Member Group.'" *See* SCL Objection, p. 15 n.7 (emphasis added). In other words, ***SCL acknowledges that the Amendments are irrelevant to the issue before this Court.*** Prior to the Amendments, GE had the right to assert that concealment of a Change of Control tolled the Notice Period and, after the Amendments, GE has the same right. Before and after the Amendments, SCL has the right to dispute GE's assertion. And before and after the Amendments, the Arbitration Provisions provide that an arbitrator will determine the validity of GE's assertions, SCL's defenses, and the Change of Control Dispute.

THE VALUATION ISSUE

24. In its Objection, SCL states that if the decision on the Valuation stay relief is deferred, SCL is willing to consider an expedited briefing schedule to address whether to lift the stay as to Valuation. *See* SCL Objection, p. 30. In light of SCL's proposal and to avoid litigation on the valuation issue at this time, with the consent of SCL, GE withdraws without prejudice its request for immediate stay relief on the Valuation, subject to GE's right to refile a request for Valuation stay relief at any time, in its sole discretion. GE also requests that the Bankruptcy Court direct SCL and the Committee to confer with GE and agree on an expedited briefing schedule that would go into effect if and when GE refiles its request for Valuation stay relief.

THE MOTION TO STRIKE

25. In its Objection, SCL requests that the Court "construe its objection as a motion to strike the irrelevant documents." *See* SCL Objection, p. 5 n.3. GE vigorously denies that the documents and evidence referred to by SCL are irrelevant to the Motion. Nonetheless, because SCL and the Committee have consented to lifting the stay to allow GE to proceed with arbitration of the Change of Control Dispute and because GE has withdrawn without prejudice

its request for stay relief regarding the Valuation, GE believes that the Court can decide the only remaining issue on the basis of the redacted Motion and redacted objections. Indeed, the only issue for the Court to determine – whether the Court has discretion to redraft the question presented in the arbitration so as to restrict the arguments GE may make and/or the evidence the arbitrator may consider – is such a narrow legal issue that the Court need merely review the Arbitration Provisions (it is undisputed that the Change of Control Dispute arises under the JV Documents). If that is the case, the redacted pleadings could be deemed the entire record and the motion to seal would be withdrawn as mooted.

26. However, if SCL or the Committee insist on arguing the merits of GE's arbitration claim, in particular the validity of any potential claims relating to disclosure of a Change of Control, GE strongly believes that the Arbitration Award and related materials are highly relevant. Accordingly, if that were to occur, GE would move to admit those materials into evidence and exercise its right to have the Court consider the entirety of the Motion, that is, the version filed under seal.

THE COMMITTEE REQUEST TO PARTICIPATE IN THE ARBITRATION

27. In its Objection, the Committee requests that the Court condition any stay relief by requiring the Committee to be allowed to participate in any arbitration that goes forward.[6] Committee Objection, ¶ 5. Notably, the Committee fails to cite a single case where a bankruptcy court conditions stay relief, or otherwise orders, creditors' committee participation in arbitration.

[6] The Committee's request is procedurally defective and improper because a request for permission to intervene should be made by motion, on notice. Fed. R. Bankr. P. 2018.

28. The Committee has not made the required showing of cause under Fed. R. Bankr. P. 2018 (limiting intervention to circumstances where the interests of the intervenor are not adequately addressed). There is no statutory right to be heard under the Bankruptcy Code. Thus, to intervene in this matter, the Committee must first demonstrate that no one else exists to adequately protect its position and that intervention would not result in undue delay or prejudice. *In re Torrez*, 132 B.R. 924 (Bankr. E.D. Pa. 1991). In general, inadequate representation may be present if it is shown that the interests of the existing party are adverse to, or different from, those of the applicant for intervention, or if it is shown that there is collusion between the existing representative party and an opposing party, or by the existing representative party's nonfeasance in the duty of representation. *Quad Sys.*, 2001 WL 1843379 at *9 n.8. None of these circumstances are present in this case. SCL has vigorously asserted its position against GE up to this point and there is no reason to assume it will do any differently in the arbitration of the Change of Control Dispute.

CONCLUSION

29. The Objections of SCL and the Committee to GE's request for relief from the automatic stay to proceed with arbitration of the Change of Control Dispute are without merit. There is no legal basis for the Court to make a determination of the merits of an arbitrable issue or to redraft the question to be presented to the arbitrator by GE so as to restrict the arguments GE may make and discovery GE may conduct, and/or the law and evidence the arbitrator may consider. The Change of Control Dispute is arbitrable under the Arbitration Provisions. Accordingly, the Objections should be overruled and the Court should modify the automatic stay to permit GE to proceed with arbitration of the Change of Control Dispute.

NOTICE

30. Notice of this Reply has been provided to: (i) counsel for the Debtors; (ii) the United States Trustee for the District of Delaware; (iii) counsel for the Official Committee of Unsecured Creditors appointed in these chapter 11 cases; and (iv) all parties who have requested notice pursuant to Bankruptcy Rule 2002, in accordance with Rule 2002-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware ("Local Rules").

WHEREFORE, GE respectfully requests that the Court enter an order modifying the automatic stay to allow arbitration of the Change of Control issue to proceed forthwith and such other relief as the Court deems just.[7]

Dated: December 14, 2006

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[7] GE has attached a revised form of Order as Exhibit A to this Reply.