SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION – GENERAL EQUITY

CHAMBERS OF
HARRIET F. KLEIN, J.S.C.
EIGHTH FLOOR

WILENTZ JUSTICE COMPLEX
212 WASHINGTON STREET
NEWARK, NEW JERSEY 07102

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Jack M. Kint, Jr., Esq.
Olshan Grundman Frome
Rosenzweig & Wolosky, LLP
Park Avenue Tower
65 East 55th Street
New York, New York 10022

Laurence B. Orloff, Esq.
Orloff, Lowenbach, Stifelman & Siegel
101 Eisenhower Parkway
Roseland, New Jersey 07068

Re: Steel Partners II, L.P. v. Aronson, et al
Docket No.: C-101-03

Dear Counsel:

In this bifurcated matter, trial was held on March 21, 22 and 28, 2005 on the issue of the "Special Litigation Committee defense" (SLC defense). The Court herein will set forth its findings and conclusions based on the record before it.

Plaintiff Steel Partners is an investment fund that invests in publicly traded companies, generally in the small-cap market (i.e., corporations whose market capitalization is below $250 million). Ronson Corporation is a New Jersey corporation, the shares of which are listed on the NASDAQ small-cap market. At all relevant times, it had a Board of Directors comprised of seven (7) members, all of whom are defendants. Another defendant is Carl W. Dinger III ("Dinger"), a paid consultant and shareholder of Ronson. No monetary damages are being sought against him; rather, plaintiff seeks to restrain Ronson from continuing to perform certain written stock option and consulting agreements with Dinger, and to require that Dinger divest

himself of stock ownership in Ronson.

Steel Partners filed this derivative action on March 25, 2003. The Complaint contains five (5) counts for relief, as follows:

1. Breach of fiduciary duty by the Directors in adopting a Shareholder Rights Agreement (sometimes referred to as a "poison pill") and the Consulting Agreement and Stock Option Agreement with Dinger dated October 8, 1998 and renewals thereof in March 2000.

2. A declaration that the original and renewed Dinger Agreements are a "preclusive and unlawful vote-buying scheme."

3. Breach of fiduciary duty by Louis V. Aronson II in acquiring Ronson stock after the inception of the Shareholder Rights Agreement.

4. Breach of fiduciary duty by the Directors in "effectively transferring control of Ronson to defendant Louis Aronson without seeking to obtain the maximum price for this transfer."

5. Breach of fiduciary duty and corporate waste by the Directors in expending Ronson assets to pay Dinger under the original and renewed Agreements, and in payment to Louis Aronson as compensation for his services as president of Ronson.

On April 10, 2003, Ronson's Board adopted a resolution to form a Special Litigation Committee ("SLC") pursuant to N.J.S.A. 14A: 6-9(1) to evaluate the derivative claims asserted by Steel Partners. Defendants I. Leo Motiuk and Saul H. Weisman were appointed to the SLC. The SLC engaged the law firm of Herrick Feinstein on May 28, 2003. After months of investigation that included interviews of witnesses and review of documents, the SLC's Report was issued on September 9, 2003. The conclusions of the SLC essentially validated the actions

of the Board and recommended, inter alia, that the Board move to dismiss the derivative claims.

The SLC defense is an extraordinary device, "the only instance in American jurisprudence where a defendant can potentially free itself from a shareholder derivative suit by merely appointing a committee to review the allegations of the complaint." Lewis v. J.B. Fuqua, 502 A.2d 962, 967 (Del. Ch. 1985). The defense originated in Delaware law, which permits a corporation's board of directors to delegate to an SLC its authority to bring a suit on behalf of the corporation, or terminate it as "detrimental to the corporation's best interest." Zapata Corp. v. Maldonado, 430 A.2d 779, 786 (Del. 1981). Our Supreme Court has held that there is nothing to "preclude the use of a special litigation committee" under the New Jersey Business Corporation Act, N.J.S.A. 14A: 1-1 to 14A: 17-18. In re PSE & G Shareholder Litigation, 173 N.J. 258, 283 (2002); N.J.S.A. 14A: 6-9 (permitting the board of directors of a New Jersey corporation to form committees with the right under law to exercise all authority of the board).

In PSE & G, supra, the Court established a "modified business judgment rule" requiring that courts defer to the decision of the SLC and dismiss a derivative complaint, upon proof by a preponderance of the evidence that its members 1) were independent and disinterested; 2) acted in good faith and with due care in their investigation, and 3) that the decision was reasonable. PSE&G, 173 N.J. at 286. Each of these standards will be discussed seriatim.

A. Independence

In the SLC context, independence of the directors "means that a director's decision is based on the corporate merits of the subject before the board rather than extraneous considerations or influences." PSE& G, 173 N.J. at 290, citing In re Prudential Ins. Co. Litig., 282 N.J. Super. 256, 276 (Ch. Div. 1995). The cases hold that a director is not deemed

"interested" merely because he or she may have approved the challenged transaction(s) as a member of the board, or because the director would likely be reluctant to see the corporation sue a fellow decision-maker. Id. Interest exists "when divided loyalties are present, or where the director stands to receive a personal financial gain from the transaction not equally shared with the shareholders." Id. at 289-90. A derivative plaintiff can rebut a prima facie case of independence through evidence that the members of the SLC were incapable of making a decision with only the best interests of the corporation in mind. See Prudential, 282 N.J. Super. at 276-82.

For the reasons that follow, the Court is satisfied from the proofs at trial that the SLC, together with independent counsel under its direction, conducted an investigation unencumbered by any conflicting business, financial or social loyalties. SLC members Motiuk and Weisman are independent outside directors not involved in the day-to-day operations of Ronson. Neither have been employed by or served as a paid consultant for Ronson, save for a minimal amount of legal work by Motiuk on an environmental matter while he was with the law firm then known as Shanley & Fisher.

None of the evidence submitted by plaintiff was sufficient to overcome defendants' showing on this issue. By way of example, for several years starting in November 1985, Motiuk and his wife rented a condominium in Tewksbury to Louis Aronson and his wife. Moreover, they were social guests at the Aronson home once in the late 1980's. Motiuk stated that Aronson was a "wonderful" tenant. They had no other social contacts in the ensuing 15 or so years. It cannot reasonably be deduced that this limited and remote relationship was significant enough to create a divided loyalty, or prevent Motiuk from acting in the best interests of the corporation as

a member of the SLC.

Plaintiff's main argument was based on a complaint filed in the United States District Court for the District of New Jersey that included Motiuk and Weisman among the named plaintiffs for a brief period of time. Motiuk testified at trial that he "allowed [his] name to be on this complaint" based upon representations of his then existing counsel from McCarter & English that the facts were accurate and that there was a reasonable basis for the complaint. He did not conduct any independent investigation at that time. He was aware that the pleading his attorneys drafted alleged that Steel Partners had brought the derivative suit "in bad faith and maliciously." Motiuk further testified that he was "concerned that there might be an appearance of conflict" even before the federal complaint was filed. He raised that concern with his counsel, Seth Taube, and in two discussions with Louis Aronson. Although Taube supposedly concurred, Aronson assured Motiuk that the attorney subsequently changed his mind, and Motiuk accepted that.

Weisman did not give any testimony at the trial. However, his deposition testimony was submitted, and both volumes have been reviewed by the Court. The 2003 transcript contains the following exchange:

> Q Did anything that occurred in this investigation change any of the opinions that you previously held regarding Steel Partners or Ronson?
>
> ...
>
> A I think I kept an open mind knowing that I was on this SLC and wanted to have all the final documentation before me in order to make an intelligent decision.
>
> Q But you testified earlier that you had come to view Steel Partners as a threat to Ronson, as a threat to takeover Ronson and dismantle it?
>
> A I did say that, yes.

> Q Did anything that occurred during the investigation cause you to modify that belief in any way?
>
> ...
>
> A Only knowing what as a Committee member of the SLC that I had to keep an open mind and I went on that basis. No matter what I thought before, once I got involved in this, I would draw a line. Mentally I would draw a line. (pp.91-92)

When asked specifically about the federal complaint, Weisman testified that at the time he agreed with the allegations of bad faith and malicious filing:

> Q What was the basis for that agreement?
>
> A I strongly felt that their [Steel Partners] filing was inappropriate and not in the business interest of the corporation nor its shareholders. (p.103)

Weisman further testified that he held these beliefs until his appointment to the SLC when "I had to open my mind and clear it of anything so that I could be an independent director." (p.103) However, when it was pointed out that the federal complaint was filed more than a month after his appointment to the SLC, he conceded that he "probably would have held those beliefs" at that time. (p.104) He, nevertheless, stated that "from the time I became involved with the SLC, which was in April; I attempted very, very conscientiously to keep an open mind to anything that would affect the findings of the SLC, not knowing what they were at the time". (p.106) He and Motiuk agreed that they should be removed from the federal lawsuit because "you can't burn the candle at both ends. You can't be on both sides. I couldn't declare myself an independent director as a member of the SLC and still have my name affixed to the other document." (p.107)

Considering the totality of the evidence on this issue, the defendants' prima facie case of Independence has not been rebutted. Motiuk, an attorney himself, was well aware of his

counsel's obligations in filing a complaint and relied on that counsel's advice. Motiuk did not personally undertake to verify the allegations of the complaint, and did not have any personal beliefs or opinions other than to defer to counsel. Although he did acknowledge private discussions with Aronson and reliance on what Aronson told him, it was not on the merits of the claims against Steel Partners and was strictly confined to the conflict issue.

The mere fact that members of the SLC are named defendants in this action or may have voted on the transactions challenged in Steel Partners' complaint does not negate their independence. See PSE&G, 173 N.J. at 289-90. Weisman was very candid as to his aversion to "outsiders" in his approval of the Shareholders Rights Agreement. Weisman's deposition testimony reflects that he took his SLC responsibilities seriously. He expressed confidence that his efforts to keep an open mind, and to avoid drawing conclusions until the final report was prepared, were successful. The Court finds the testimony that he did not prejudge the matter worthy of belief. While it is always possible that one or both of these men, as human beings, retained subliminal vestiges of information received from various outside sources, there is no basis to conclude that their brief and temporary stint as plaintiffs in the federal suit precluded them from acting in the best interests of the corporation.

The record also reflects that Herrick Feinstein, the counsel selected by the SLC, was independent from Ronson and its Board. The firm had not performed any legal services on behalf of Ronson, any of its subsidiaries or affiliates, or any of the members of the Board of Directors. In the trial testimony of Therese Doherty, the lead counsel from Herrick, her aggressive and tenacious personality was evident. The Court believes it unlikely that she would

be dominated by this or any client, for that matter, or allow the client's feelings to interfere with her responsibilities. The engagement of Herrick Feinstein and the manner in which it conducted its investigation, in consultation with its client, is a further factor demonstrating independence.

B. Good Faith and Due Care

With respect to the second prong of the SLC defense, courts focus on the SLC's "due care in investigating the merits of the litigation." PSE&G, 173 N.J. at 291. The quality of the investigative process, rather than the substantive decision, is the issue. The investigation must be deemed sufficiently thorough, in good faith and conducted with due care, so that "a reviewing court can look to it and conclude confidently that it reflects a corporation's earnest attempt to investigate a shareholder's complaint." Id. at 292. As our Supreme Court stated, "the inquiry is whether the 'investigation' has been so restricted in scope, so shallow in execution, or otherwise so pro forma or half-hearted as to constitute a pretext or sham [.]" Id., quoting Stoner v. Walsh, 772 F. Supp. 790, 806 (S.D.N.Y. 1991).

It is undisputed that the SLC, with the assistance of Herrick Feinstein, conducted an investigation for over three months which included document requests, interviews with eleven witnesses (current and former directors, a consultant, and Ronson's Chief Financial Officer), and a review of over 3,000 pages of documents; toured the Woodbridge, New Jersey facility, and issued a 139-page Report. At least two partners, an associate and a paralegal were involved at all times; the billable hours were close to 450 in August and September 2003 alone. The exacting standard set by the case law, however, demands that this be not so much a quantitative as a qualitative analysis. The Board's process must be viewed "through the prism of the modified business judgment rule" under the particularized facts presented here, to determine if the SLC

acted in good faith and in a sufficiently informed manner. PSE&G, 173 N.J. at 292.

In this context, it is relevant that critical documents concerning Dinger were not produced until the last week before the SLC report was due. When Herrick Feinstein was retained in late May, they immediately requested documents, including requests for Dinger to do work or relating to work Dinger performed. Inexplicably, it was not until August 28, 2003 that Ronson produced over 400 pages of Dinger material. By that time, Doherty had drafted the Report's factual section and certain legal conclusions. The belated production included a July 16, 1998 letter from Dinger to Louis Aronson in which Dinger terminated discussions with Ronson and expressed a belief that a consulting arrangement would not "produce any significant tangible benefit for either the corporation or myself." Doherty indicated that this document raised questions as to what had prompted the "change of heart" that led to the Agreements with Ronson. They were undeniably aware that the only known intervening event was Steel Partners' offer on or about August 14, 1998. Doherty conceded that issues as to the chronology of events and the motivations for the Dinger Agreements were raised by the letter, requiring them to look at all prior conclusions with a "fresh eye."

Doherty decided to speak telephonically with both Louis Aronson and Dinger again. Weisman and Motiuk declined to participate in the interviews. According to the attorney's testimony, the telephone conversation with Aronson on August 29 was "not helpful" because he could not recall whether the discussions with Dinger occurred before or after Steel Partners' offer. He continued to maintain that there was no break in the discussions which, in light of

Dinger's letter, admittedly "didn't make sense" to Doherty.

Thereafter, she had a telephone conversation with Dinger which was "like a light bell [sic]." He described the letter as an expression of his "frustration" over the lack of concrete terms, to which Aronson responded by scheduling a lunch meeting on August 3, 1998. Dinger told Doherty that the meeting was noted in his diary. Aronson ostensibly put forth sufficient details and substance at that meeting to revive Dinger's interest.

Despite his earlier lack of recall, Aronson confirmed Dinger's version of events in a statement dated September 3, 1998 (the same day as Doherty's conversation with Dinger). It was accepted by the SLC without any written corroboration of ongoing discussions in August 1998. The August 3, 1998 meeting appeared in the final draft of the SLC report to bolster the SLC's conclusions as to the business purpose of the Dinger agreements.

The testimony revealed that this was not the only last-minute document production by Ronson. On or about August 19, 2003, after drafting of the SLC report had commenced, Doherty received what she described as a "slew" of documents relating to the two years of due diligence investigation by Ronson into Steel Partners and the analysis by their outside accountants. These also had been the subject of requests outstanding for over two months. It prompted an interview of the CFO, Daryl Holcomb. Thus, after being deluged with documents that were critical to the issues before the SLC --- including a letter that undermined the foundation upon which the conclusions as to Dinger were built --- the attorneys for the SLC conducted a sum total of three interviews.

That there was no apparent skepticism expressed at the first-time revelation of the alleged meeting of August 3 is disturbing. The SLC did not request Dinger's diary or any notes of the

meeting from either Dinger or Aronson. Similarly, the SLC accepted Holcomb's analysis that Steel Partners' "tactics were to assume control of a company, destroy it and take the cash out for themselves." In fact, this statement underscored the SLC's conclusion that a transaction with Steel Partners was not in the shareholders' best interest. Yet, the SLC did not conduct an independent investigation beyond the documents on which Holcomb relied, which Doherty conceded did not actually state that Steel Partners had assumed control, destroyed or taken cash out of any one of five other companies. When pressed about this on cross-examination, Doherty replied that they were "disadvantaged" by Steel Partners' lack of participation in the investigation. That, of course, is not a genuine excuse, since it is unlikely that Steel Partners would have offered anything to support Holcomb's unflattering characterization of its "tactics."

Unfortunately for the SLC and its counsel, the material that was the most significant to the Committee's work was not in hand until the final three weeks of the process. While one can have sympathy for their resulting nocturnal labor under the pressure of time constraints, that does not justify their failure to give these documents the scrutiny that they merited. Their superficial treatment belies Doherty's testimony that there was "no stone that we left unturned, no question that we felt was relevant that wasn't answered, no document that we sought not to get." The defendant has not met its burden on this prong of the test established in PSE &G.

C. Reasonableness

Our Supreme Court has stated the following with respect to the scope of judicial review of the findings, reasoning, conclusions and recommendations of independent corporate directors:

> Courts would have to dismiss a shareholder derivative suit in accordance with management's recommendations so long as the corporation could establish the decision maker acted reasonably,

> in good faith, and in a disinterested fashion. The standard would not permit the court to substitute its own business judgment for that of management.

PSE&G, supra, 173 N.J. at 287. It further stated that the issue of reasonableness requires a court to "consider all relevant justifications for management's determination, including the seriousness and weight of the plaintiff's allegations." Id. at 294-295 (citing PSE&G, 315 N.J. Super. at 336). The question is whether, under the totality of the circumstances, there is a reasonable basis in fact or law for the SLC's fact findings, legal conclusions and recommendations.

Notwithstanding that the SLC adopted Holcomb's conclusions concerning Steel Partners' intentions without independent verification (as discussed above), there was sufficient other evidence to render the SLC's factual findings reasonable on that issue. This included Steel Partners' March 6, 1998 shareholder proposal and supporting statement recommending the "sale, merger or liquidation" of Ronson's operating divisions with the view of increasing shareholder value. This was followed several months later by Steel Partners' announced intended proxy contest, nominating Gary Ullman and Robert Frankfurt to the slate of directors to be voted at the annual meeting. The SLC noted that the Ronson Board had reason to question Steel Partners' good faith in nominating Ullman because of his involvement in a plea bargain on behalf of a corporation in New Jersey in an environmental case, considering that Ronson had ongoing environmental clean-up issues with state and federal regulators.

Moreover, there was evidence that, to the extent that Steel Partners sought to pursue a merger, it was contemplated to be with Gateway Industries, a corporation controlled directly or indirectly by Steel Partners. The Ronson Board had information that Gateway had suffered at least a $6.5 million decline in shareholder equity (although it was debatable whether that was

attributable to Steel Partners). Further information about the proposed merger partner was apparently not forthcoming from Steel Partners and its managing member, Warren Lichtenstein.

The SLC also concluded, based upon interviews with Louis Aronson, that Steel Partners --- through Lichtenstein---apparently interfered with Ronson's efforts to reacquire the rights to its brand name in the European market and other markets outside of the U. S. and Canada. The acceptance of statements from Aronson, without more, arguably might fail to satisfy the reasonableness test, but for their validation in the deposition testimony of Lichtenstein himself. He admitted that Aronson had asked him not to get involved with Ronson plc (a separate corporation in the United Kingdom that held the rights to the Ronson brand name), a request that he ignored. He testified to one or more meetings with principals of Ronson plc at which various business issues were discussed, including the brand. The flippant manner in which Lichtenstein initially attempted to pass off the meeting(s) as pertaining to a personal purchase of lighters from Ronson plc lends an unsavory aura to the whole episode, in the eyes of the Court. Considering the totality of the evidence, there is at least a reasonable basis for the SLC's conclusion that the Ronson Board undertook defensive measures in a good faith belief that they needed to protect Ronson against a hostile takeover waged by Steel Partners that would not be in Ronson's best interest.

The SLC proceeded in its Report to address the particular actions taken by the Ronson Board. Among these was the Shareholder Rights Agreement, as a result of which any hostile acquirer was prevented from gaining more than 12% of the stock without the consent of the Board. The SLC's review of the law applicable to so-called "poison-pill" agreements, and what are known as "slow hand" provisions, led it to conclude that it could not justify the cost of

defense of such provisions. It was established at trial that the Ronson Board adopted and implemented amendments recommended by the SLC to eliminate the "slow hand" provision and to provide a limitation upon the amount of additional shares of Ronson stock that Louis Aronson could acquire without triggering the protective provisions of the Shareholder Rights Agreement.

However, the SLC was not as accommodating in its conclusions relating to the Dinger Consulting Agreements and the Dinger Option Agreements. The SLC concluded that these agreements did not constitute an unlawful vote-buying scheme, and that Ronson's Board of Directors did not thereby breach fiduciary duties or commit waste. This was premised upon findings that the primary purposes for entering into the agreements was to secure (i) the benefit of Dinger's consulting services; (ii) a valuable option to purchase his shares, and (iii) voting control over those shares to defend against a hostile takeover attempt by Steel Partners.

It is here that the effects of a cursory analysis of the belatedly received Dinger documents is most evident. In an effort to handle the curve ball thrown by the last minute discovery of the July 16, 1998 letter, the SLC missed or closed its eyes to numerous red flags. There is no evidence that Ronson was seeking a consultant in any field when Louis Aronson proposed a consulting arrangement to Dinger. No one else was ever considered for this job. No one had a specific consulting project in mind for Dinger, not even for the aviation division (RAI), and there is no evidence of his doing any work until January of 1999, months after he signed his consulting agreement. Ronson was paying Dinger $4,500 per month for consulting alone. No one at Ronson had a similar agreement for a guaranteed 18-month term without specified time requirements or job duties. The term of the agreement was extended for four years in 2000, again without specific tasks or time commitments.

Doherty testified that the provision for Dinger's performance of work upon request, if consistent with his schedule in his sole discretion, was used in a prior agreement with a former director, who was never asked to perform any services. In contrast, Ronson's agreement with Mr. Ganz required a specified amount of time per week and was terminable on 180 days' notice. The arrangement with Mr. Quinnan provided for payment on a per diem or hourly basis for work actually done, and was terminable on 90 days' notice.

Moreover, assuming the need for a consultant for RAI, there was a questionable basis to select Dinger. Louis Aronson's explanation was that Dinger could assist Ronson "based upon his investment banking background and knowledge of the aviation industry." Dinger in fact was a financial analyst with an MBA in finance and marketing, and who had a law degree and was an instrument-rated pilot. Dinger's letter expressed his own belief that Ronson would receive no benefit from hiring him as a consultant.

There was additional evidence that renders the SLC's conclusion as to the business purpose of the option agreements unreasonable. To the best of everyone's knowledge, this was the first instance of Ronson purchasing an option from a shareholder. Doherty acknowledged that the exercise price for the option was approximately three times above the market price for Ronson's stock at the time. No explanation was forthcoming as to why the company, operating at a net loss for the prior year, would purchase an out-of-the money option on its own shares. The asserted purpose of raising needed capital by selling stock to Dinger makes no economic sense, considering that the cost to the company of the agreements was "pretty close" (in Doherty's words) to the purchase price that Dinger paid. It also was not logical that the company would sell Dinger additional shares in 2000, despite a lingering concern that he might dispose of

his shares in the market and depress the stock price.

None of these issues caused the SLC and its counsel to doubt whether this was a bona fide consulting arrangement. The SLC accepted the statements of other board members that the consulting agreement was viewed together with the option/proxy agreement as a "package." However, the surrounding circumstances coupled with the lack of economic logic in the agreements, made it unreasonable to ignore the desire for Dinger's proxy in anticipation of a proxy contest as a driving force in the transaction.

The objective facts were that in late January or early February 2000, an investor named Howard Lorber filed a Schedule 13D disclosing the purchase of approximately 8.4% of Ronson stock. That was only one month before the renewal of the Dinger agreements. Doherty understood Lorber to be a "significant" shareholder and that he was associated with Steel Partners; yet, she did not look at his 13D. She did not recall if the SLC inquired when discussions about selling stock to Dinger began. Notwithstanding the allegations about Lorber in the federal complaint, she did not ask any witnesses if the decision to sell Dinger an additional six percent of Ronson was in response to Lorber's shareholding. Motiuk did not recall any inquiry into the relationship between these two events, and Weisman did not recall Lorber's name at his 2004 deposition. As noted above, the thoroughness of an investigation bears a direct relationship to the reasonableness of its conclusions. All of these omissions and oversights preclude a reasonable finding that the Board was fully informed and acted in good faith, and thus entitled to the protection of the business judgment rule as the SLC concluded. With regard to the agreements in 2000, in particular, no offer was pending at the time and the perceived "threat" of Steel Partners was at best remote. All of this renders application of N.J.S.A. 14A: 6-1(3), the

codification of the "business judgment rule," questionable.

The SLC report also failed to explicitly note that the beneficial ownership of management changed as a result of the Dinger agreements from 34.1 to 49.2 (comprised of 32.4% held by directors and officers, the Retirement Plan's 4.9%, and 11.99% from the Dinger proxy). It concluded that because management did not hold an arithmetic majority, there was no change in control and therefore the Board's actions did not constitute a breach of fiduciary duty and waste. Although there is support for the numerical majority approach, see In re IXC Communications, Inc., 1999 WL 1009174 (Del. Ch. 1999), there are other cases which state that courts should look to the practical realities on issues of voting control. E.g., In re Cysive, Inc. Shareholders Litigation, 836 A. 2d. 531, 552 (Del. Ch. 2003) (40% bloc of shares held to wield practical control); Robbins and Co. v. A. C. Israel Enterprises, 1985 WL 149627 (Del. Ch. 1985) ("substantial minority interests ranging from 20% to 40% often provide the holder with working control") and other cases cited therein; Essex Universal Corp. v. Yates, 305 F. 2d 572, 579 (2d Cir.1962) ("it is commonly known that a person or group owning so large a percentage of the voting stock of a corporation [28.3%]... is almost certain to have share control as a practical matter"). It was unreasonable for the SLC to not consider that the Dinger shares procured by the option/proxy agreements could be decisive or critical in an election.

The final area to be addressed concerns the employment agreement with Louis Aronson and his compensation. The SLC approved as reasonable the Board's determination that "the amount of Aronson's base salary was justified in light of his contributions, abilities, experience and expertise." According to the evidence, between 1998 and 2003 Aronson's total compensation increased from $557,612 to $750,795. His aggregate compensation of $4,514,916

in 1998-2003 exceeded Ronson's net earnings for those years, which totaled $1,590,000.

The SLC noted Aronson's knowledge and experience and numerous contributions to Ronson over a 56-year period, including 50 years as its president and CEO. The SLC found that as of September 2003, Aronson performed many different functions, in addition to his regular duties as president and CEO. These included the areas of finance, new product development, marketing, human relations, and operations. When questioned about someone of Aronson's age having such a work load, Motiuk testified at trial as follows:

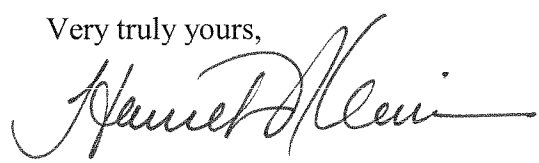
> Your question shows a lack of understanding [of] the energy of Mr. Aronson. I agree he's 77, 78 [;] now he may be 80 years old. You can praise or criticize Mr. Aronson but I don't think you can call his strength and vigor incredulous. I would submit to you, I don't know you as well as I know myself, that either one of us, his energy far surpasses us so that to make a decision based upon his age alone would not be a fair analysis of this matter. He's certainly probably unusual for what we might think of people that age, but you have to look at him personally and his energy factor is enormous. And it shows, and I should add here, I mean, I have some - - his work ethic. The man is a seven day a week worker. If there's a criticism of him, perhaps it's that he works too much.

Giving credit where credit is due for Louis Aronson's devotion to Ronson, one still must question whether it is reasonable for his total earnings to be approximately three times that of the company during a five-year period in which the company's business performance was declining. There was no financial analysis done to verify the claim that hiring additional people would be more costly. Ronson had no independent compensation committee. In fact, one of the SLC's recommendations was the formation of a compensation committee and updated consideration of

Aronson's compensation and alternative approaches (including methods used by other corporations), which was approved by the Board.

For the reasons set forth above, the Court finds that the defendants have not established by a preponderance of the evidence that the SLC's investigation was thorough or its conclusions reasonable. Therefore, defendants' request for judgment in its favor on the Special Litigation Committee Defense, and dismissal of the Complaint, is denied. Counsel should submit an appropriate Order. Counsel should also advise the Court of the extent of any discovery that remains to be taken so that a trial schedule for this case can be established.

Very truly yours,



HARRIET F. KLEIN, J.S.C.

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