IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CITY CAPITAL ASSOCIATES LIMITED PARTNERSHIP, a Delaware Limited Partnership, CARDINAL HOLDINGS CORP., a Delaware Corporation, and CARDINAL ACQUISITION CORP., a Delaware Corporation,	:	
Plaintiffs,	:	C.A. No. 10105
v.	:	
INTERCO INCORPORATED, a Delaware Corporation, Harvey Saligman, Richard B. Loynd, R. Stuart Moore, Charles J. Rothschild, Jr., Ronald L. Aylward, Donald E. Lasater, Harry M. Krogh, Lee Liberman, Mark H. Lieberman, Robert H. Quenon, William E. Cornelius, Marilyn S. Lewis and Thomas H. O'Leary,	:	
Defendants.	:	

AMENDED COMPLAINT

As and for their amended complaint herein, plaintiffs City Capital Associates Limited Partnership ("City Capital"), Cardinal Holdings Corp. ("Cardinal Holdings") and Cardinal Acquisition Corp. ("Cardinal Acquisition") by their attorneys, allege, upon knowledge as to themselves and their own acts, and upon information and belief as to all other matters, as follows:

Summary Of This Action

1. As alleged more fully below, Cardinal Acquisition has today commenced a $70 cash tender offer (the "Offer") for

all of the outstanding shares of Interco Incorporated ("Interco") which it does not now own. The Offer is part of a proposed transaction pursuant to which all shareholders of Interco will receive the same price of $70 for each of their Interco shares. As soon as practicable following consummation of the Offer, Cardinal Acquisition intends to effect a merger with Interco in which all remaining Interco shareholders will receive $70 for each of their Interco shares (the "Merger"). The Offer is currently scheduled to expire on September 12, 1988.

2. The Offer is being made directly to Interco's shareholders because the Company has rebuffed every effort by plaintiffs to negotiate a consensual transaction. Prior to commencing the Offer, on July 27, 1988, City Capital proposed a merger between City Capital and Interco by letter to the board of directors of Interco (the "Merger Proposal") pursuant to which all shareholders of Interco would receive the same premium price of $64 for each of their Interco shares. In addition, City Capital advised Interco's Board that it was willing to negotiate the terms of its proposal, including price. City Capital never received a formal response from the Interco Board in response to the Merger Proposal.

3. On the morning of August 8, 1988, in a subsequent letter to the Interco Board (the "Revised Merger Proposal") written in anticipation of the Board meeting scheduled for that

date, plaintiff revised the Merger Proposal to provide for an increased cash price of $70 per share for all issued and outstanding shares of Interco (including, as with the original Merger Proposal, shares of common stock subject to unexercised options and conversion of convertible securities). Also as in the original Merger Proposal, City Capital stated that "we remain willing to consider increasing the price per share to be paid to all of Interco's stockholders . . . based on a further review of information relating to Interco" and that "we are available to meet with the Board should it have any questions concerning our revised merger proposal."

4. City Capital also informed the Board in the Revised Merger Proposal that its financial advisor, Drexel Burnham Lambert Incorporated, "is highly confident that up to $1.375 billion of debt and/or equity financing can be raised in order to finance, in part, our revised merger proposal," and that City Capital is highly confident that other bank financing necessary for the transaction can be available within 48 hours.

5. Acceptance of the Revised Merger Proposal, which is at a premium price, would be in the best interests of Interco's shareholders. As City Capital had anticipated, the Revised Merger Proposal was nevertheless immediately rejected by the entrenchment-minded defendant directors of Interco without adequate consideration within hours of its receipt by the Board.

Although this response was not unexpected, given the Interco Board's extensive history of ignoring shareholder interests and taking unilateral action to perpetuate their own control, the speed with which the Board acted in rejecting the Revised Merger Proposal was surprising.

6. City Capital delivered its Revised Merger Proposal to the Interco Board shortly before 10:00 a.m. EDT on August 8, 1988. This was the first time the $70 per share premium price offered in the Revised Merger proposal had been proposed; prior to that time, plaintiff's original $64 per share Merger Proposal was the only offer on the table. However, defendants immediately rejected the $70 Revised Merger Proposal without giving it due and proper consideration. By 5:32 p.m. EDT on August 8, the Board's rejection of City Capital's Revised Merger Proposal had crossed the Dow Jones Broad Tape.

7. At the same time as it announced its rejection of the Revised Merger Proposal on August 8, Interco falsely stated that the interests of Interco's shareholders "were better served by the company's continued pursuit of the restructuring.... under consideration." No details of any such "restructuring" were provided, nor even any date (other than "in the near future" when a recommendation on such a "restructuring" would be made to the Board.

8. Apparently the defendants are already undertaking that restructuring. It was reported that the Interco Board had approved "offering for sale [Interco's] Apparel Manufacturing Group". It had earlier been reported that the proposed restructuring could include the sale of its apparel manufacturing group.

9. The sale of the apparel manufacturing group in and of itself will constitute a major restructuring of Interco. The apparel manufacturing group is a major asset of Interco, constituting nearly one-quarter of the Company's revenues in 1988, with sales in excess of $813 million.

10. Interco's statement on August 8 that the shareholders would be "better served by the Company's continued pursuit of the restructuring...under consideration" was false and misleading. One analyst has already stated (as reported by The New York Times) that "[t]he restructuring proposal seems inadequate in light of the [Revised Merger Proposal]." It was reported that that same analyst said he "doubted that any restructuring package could equal the [Revised Merger Proposal price]" "[s]o long as the company remains publicly held."

11. In rejecting the Revised Merger Proposal, defendants have begun to use, in addition to the proposed restructuring, other of the formidable defensive weapons which they have placed at their own disposal. These defensive weapons include,

among other things, a "poison pill" rights plan which defendants originally adopted in September 1985 (the "Rights Plan") and which was amended in July 1988 (the "Amended Rights Plan"), for the purpose of deterring unsolicited takeover attempts and usurping from shareholders the power to accept or reject a tender offer. Defendants announced on August 8 that they had amended the Amended Rights Plan to lower its "triggering percentage" such that the Rights are exercisable -- and the Amended Rights Plan's massive dilutive effects are triggered -- if a person or group acquires a mere 15 percent or more of Interco's common stock.

12. If defendants are permitted to continue to use this weapon in connection with the offer, plaintiff's acquisition of Interco may become economically unfeasible. Accordingly, the Offer is conditioned upon, among other things, defendants taking such actions as are necessary to redeem the poison pill rights, or those rights otherwise being invalid or inapplicable to the acquisition of shares pursuant to the Offer and proposed Merger. In view of their most recent actions -- as well as their history of entrenchment and single-minded devotion to the promotion of their own interests over those of the Interco shareholders -- defendants are unlikely to take those actions necessary to redeem the poison pill rights.

13. Even prior to their actions on August 8, the hallmark of defendants' past conduct has been entrenchment. Among other things, as described more fully below:

- On September 23, 1985, Interco adopted the Rights Plan, which is designed to deter unsolicited take-over bids by creating the prospect of substantial dilution for any person attempting to effect a business combination with Interco, without approval of defendants. Interco adopted the Rights Plan to ensure defendants' perpetual control of Interco and ability to block any acquisition of the Company, no matter how attractive the terms might be to Interco's shareholders;
- On July 11, 1988 Interco announced that it had changed the terms of the Rights Plan, adopting the Amended Rights Plan. The Company's announcement said that the new rights will be effective July 21 and that defendants had authorized the redemption of the rights existing under the original rights plan. The Company also disclosed little substantive information as to the nature or effect of the Amended Rights Plan and subsequently misleadingly stated that the Amended Rights Plan was "purely an update of [Interco's] former plan" when in fact the Amended

Rights Plan is a more onerous takeover defense than the original Rights Plan.

- On July 15, 1988, Defendant Saligman announced that he intends to recommend a major restructuring of the Company at its next board meeting and stated that Interco is "undervalued". Defendants omitted to state that the intended effect of this proposed restructuring is to deny Interco's shareholders the opportunity to participate in any proposal that would prove more attractive than defendants' restructuring/entrenchment scheme, or to provide any details of this proposed restructuring.

14. The defendant directors have violated their fiduciary duty of candor by not disclosing to shareholders the precise terms of the proposed restructuring and the Amended Rights Plan and, most significantly, the consequential anti-takeover and entrenchment effects of these actions. Moreover, Interco has been undertaking a continuous program of repurchasing its shares in the market while disseminating selective information regarding the Amended Rights Plan and the proposed restructuring.

15. The purpose of this lawsuit is to prevent defendants from continuing their scheme of entrenchment by utilizing the proposed restructuring, the Amended Rights Plan, false and

misleading public statements or Section 203 of the New Delaware Anti-Takeover Statute 8 Del. C. § 203 (1988) (the "Anti-Takeover Statute") to defeat the Offer. Unless injunctive relief is granted, defendants will continue to entrench and maintain themselves in office, will continue inequitably and illegally to deprive plaintiffs of their right to acquire the shares of Interco stock, will continue to mislead and misinform Interco shareholders and will deprive all other Interco shareholders of their right to realize a full and fair value for their shares, at a substantial premium over the market place.

THE PARTIES

16. Plaintiff City Capital is a Delaware Limited Partnership with its principal executive offices at 3524 Water Street, N.W., Washington, D.C. 20007. City Capital is the beneficial owner of 3,158,700 shares of Interco common stock, representing approximately 8.7% of all Interco shares outstanding. City Capital purchased those shares in May, June and July of this year.

17. Plaintiff Cardinal Holdings is a corporation organized and existing under the laws of the State of Delaware. All of the shares of Cardinal Holdings are owned by City Capital.

18. Plaintiff Cardinal Acquisition is a corporation organized and existing under the laws of the State of Delaware.

Cardinal Acquisition is a wholly-owned subsidiary of Cardinal Holdings.

19. Defendant Interco is a Delaware corporation with its principal corporate offices at 101 South Hanley Road, St. Louis, Missouri 63105. Interco is a diversified company, primarily engaged in apparel manufacturing; general retail merchandising; footwear manufacturing and retailing; and furniture and home furnishings retailing. As of May 31, 1988, Interco had outstanding approximately 36,166,923 common shares, which are listed and traded on the New York and Midwest Stock Exchanges. Interco also has 367,208 shares issued of a Series D $7.75 Cumulative Convertible Preferred Stock, $100 stated value (the "Series D Preferred Stock") which is also listed on the New York Stock Exchange. Each share of the Series D Preferred Stock is convertible, at the option of the holder, into 4.3242 shares of the Company's Common Stock.

20. Defendants Harvey Saligman, Richard B. Loynd, R. Stuart Moore, Charles J. Rothschild, Jr., Ronald L. Aylward, Donald E. Lasater, Harry M. Krogh, Lee Liberman, Mark H. Lieberman, Robert H. Quenon, William E. Cornelius, Marilyn S. Lewis and Thomas H. O'Leary are members of the Board of Directors of Interco. As such, they owe the highest fiduciary duties of loyalty and care to Interco shareholders, including the duty to maximize shareholder wealth.

21. Defendant Saligman is also the Chairman and Chief Executive Officer of Interco; defendants Rothschild, Moore and Loynd are also Vice-Presidents of Interco. During fiscal year 1988, Defendant Saligman received $712,083 in salary and bonus. The equivalent fiscal 1988 compensation figures for defendant Rothschild was, $369,288; defendant Moore, $452,342; and for defendant Loynd, $463,959.

FACTUAL BACKGROUND

A. The Rights Plan

22. On September 23, 1985, the board of directors of Interco approved the adoption of the Rights Plan. Although the Rights Plan was intended to deter any tender offer for Interco unilaterally disfavored by defendant directors, it was adopted by them without the prior knowledge or approval of Interco's shareholders -- the intended beneficiaries of any tender offer deterred by defendants' actions.

23. On July 11, 1988, the defendant directors adopted the Amended Rights Plan and declared that it would issue a dividend of one share purchase right per share of common stock (a "Share Purchase Right") effective July 21, 1988. The Company did not immediately disclose many of the substantive changes effected by the Amended Rights Plan that make that takeover defense even more onerous than the original Rights Plan, other

than changes in the purchase price per share and certain of the triggering provisions of the Rights Plan.

24. The Share Purchase Rights are not exercisable or transferable apart from Interco's common stock until after the "Distribution Date" -- that is, the earlier of (i) 10 days following a public announcement that a person or group has acquired (or obtained the right to acquire) beneficial ownership of 15 percent or more of Interco's outstanding common shares (thereby becoming an "Acquiring Person"); or (ii) 10 days following the commencement or announcement of a tender offer which would result in the offeror becoming the beneficial owner of at least 15% of Interco's common stock (thereby also becoming an "Acquiring Person"). Defendants amended the Amended Rights Plan on August 8, 1988 to lower these triggering percentages from their previous 20% to the current 15%.

25. Upon the Distribution Date, the Share Purchase Rights become exercisable and can be transferred separately from the shares of common stock to which they are attached. Each Share Purchase Right, when exercised, entitles its holder to purchase one common share of Interco stock at an exercise price of $160. The Share Purchase Rights may be exercised until July 31, 1998, unless earlier redeemed by defendants.

26. The $160 exercise price of the Share Purchases Rights greatly exceeds the economic value of the units of common stock into which they are initially convertible. Accordingly, the Share Purchase Rights were never intended to be used to purchase such common stock. Instead, the sole reason for the Share Purchase Rights is their "flip-over" and "flip-in" provisions, described below, which were designed to punish any offeror unacceptable to defendants by creating an insurmountable economic barrier to its acquisition of control.

27. Under the terms of the Amended Rights Plan, if Interco is acquired in a merger or other business combination which is not blessed by incumbent management, or the Acquiring Person engages in certain other "self-dealing" transactions, each Share Purchase Right "flips-over" and entitles its holder to purchase an amount of shares of the acquiring company's stock having a market value of two times the exercise price of the Share Purchase Right. In other words, a Share Purchase Right holder can purchase $320 worth of the acquiring company's shares for $160. If Interco is the surviving company in the unfriendly merger or other business combination, this same effect is accomplished by providing each Share Purchase Right holder, other than the acquiring company, with the right -- the "flip-in" right -- to convert its Share Purchase Right into Interco shares at the same dilutive two to one ratio.

28. The Amended Rights Plan -- unlike the original Rights Plan -- further provides that the Share Purchase Rights "flip-in" if (a) a person or group acquires (or obtains the right to acquire) 15% or more of the outstanding common shares of Interco (unless that person or group first acquires 15% or more of the outstanding shares of Interco in an all-cash all-holders tender offer where the purchase of those shares increases that person or group's holdings to 80% or more of the outstanding common shares of Interco); or (b) after the appearance of an Acquiring Person, Interco undertakes a recapitalization, reorganization or reclassification of its securities which has the effect of increasing by more than one percent the proportionate share of Interco stock owned by the Acquiring Person. The "flip-in" triggering percentage was lowered from 30% to 15% at the Board's meeting this August 8 in direct response to plaintiff's Revised Merger Proposal. The Amended Rights Plan also allows the Interco Board to exchange each right for one common share of Interco Stock where a person or group acquires (or obtains the right to acquire) between 30% and 50% of the outstanding common shares of Interco.

29. The "flip-in" provisions of the Amended Rights Plan have the added feature that they can be amended at the sole discretion of Interco's directors, without the consent of the holders of the Rights, such that the Rights will be triggered at

a threshold as low as 10%. The directors implemented this provision on August 8, lowering the triggering threshold to 15%.

30. The massive dilutive effect of the Share Purchase Rights ensures that no entity disfavored by defendants will dare to acquire a significant minority position in Interco, much less consummate a tender offer for, or attempt a merger or other business combination with, Interco, unless the Share Purchase Rights are first redeemed. In practical terms, this deters all unsolicited takeover attempts, because tender offers for a company the size of Interco nearly always are followed by a second-step merger. Insofar as offers are not so deterred, the device grants enormous power to the board to defeat the offer and achieve the entrenchment goals sought by the defendants.

31. To illustrate the dilutive effects of the Share Purchase Rights on a potential acquiror, if plaintiff was to purchase 90% of the outstanding Interco shares and associated Share Purchase Rights and thereafter to effect a merger with Interco, the exercise of the remaining 10% of the Share Purchase Rights by the non-tendering Interco shareholders would allow them to purchase sufficient Interco stock to reduce plaintiff's equity interest in Interco from 90% to 75%.

32. The deterrent effect of the potential dilution caused by the Share Purchase Rights has been acknowledged by defendants, who admitted in an SEC Report on Form 10-Q dated

July 13, 1988 that "[t]he Rights have certain antitakeover effects . . . [and] will cause substantial dilution to a person or group that attempts to acquire Interco on terms not approved by Interco's Board of Directors, except pursuant to an offer conditioned on a substantial number of Rights being acquired."

B. Interco and the Defendant Directors' Deceptive Conduct and Other Acts of Entrenchment

33. Interco and the defendant directors have taken numerous actions which demonstrate their fierce commitment to keeping themselves entrenched in power. For example, Interco's certificate of incorporation and by-laws constitute formidable obstacles to a change of control. The certificate of incorporation and by-laws (i) provide for a staggered Board having three classes of directors; (ii) prohibit the calling of a special meeting unless a majority of the Board so decrees; (iii) prohibit shareholder action by written consent; (iv) require a 75% vote of shareholders for a merger or consolidation, unless a majority of the Board approves that transaction; (v) authorize the Board to issue "blank check" preferred stock, with potentially disparate voting rights.

34. Upon receiving Interco's Revised Merger Proposal, the defendant directors made sure to leave no doubt that entrenchment was their foremost goal. They rejected that proposal within hours after receiving it. Interco said that its financial advisor Wasserstein, Perella & Co., termed the proposal

"inadequate," although the price announced in the Revised Merger Proposal had just been presented to the Interco Board that day. The defendant directors then proceeded to implement their restructuring plan, approving the sale of the apparel manufacturing group, a major Interco division, and amended the Amended Rights Plan to make it even more onerous. The defendants have not yet deigned to discuss plaintiffs' Revised Merger Proposal.

35. Interco has also recently undertaken a scheme of strengthening its takeover defenses while at the same time severely limiting its public disclosures as to its actions so as to artificially increase the price of its stock. For instance, Interco has been undertaking a repurchase program during the course of the past nine months pursuant to which the Company is repurchasing up to five million shares of its common stock. Interco has reportedly purchased over 3.5 million shares pursuant to that program.

36. On July 18, the Company stated that it is "resuming" its open-market share repurchase program (apparently without previously having announced that it had "stopped" that program). The Company has not disclosed whether it will purchase more or fewer shares than the 5 million targeted in the original program, and gave no other explanations for the "resumption" of this program.

37. The Company also limited the information it disclosed in conjunction with the announcement of the Amended Rights Plan. The Company did not immediately disclose the substantive changes effected by the Amended Rights Plan other than certain changes in the purchase price per share and triggering provisions of the Rights Plan.

38. Specifically, Interco failed to disclose, inter alia, that the Amended Rights Plan (unlike the original Rights Plan) allows the Board in its sole discretion to lower certain triggering percentages such that the massive dilutive effects of that Plan will come into play when a person or group acquires as little as 10% of the shares of Interco stock. (In fact, as described above, the Board has since implemented this provision, lowering certain triggering percentages of the Amended Rights Plan to 15%).

39. Interco also failed to disclose that the Rights will "flip-in" if the company undertakes certain measures, including a recapitalization or reorganization, after an Acquiring Person appears. This provision, by which the Rights are effectively triggered once an entity acquires 15% (at the time of the announcement, 20%) of the shares of Interco (because the company may unilaterally at that time cause the massive dilutive effects of the Rights Plan to occur by causing a recapitalization) substantively changes the original Rights Plan, under which the

Rights could be triggered only upon an entity acquiring 30% of the shares of Interco. Its omission was particularly misleading in light of the Company's statement that the Amended Rights Plan was "purely an update of [Interco's] former plan," and failure to disclose that the Amended Rights Plan is a more onerous take-over defense than the original Rights Plan.

40. On July 15, 1988, it was reported that defendant Saligman, the Chairman and Chief Executive Officer of Interco plans to recommend a "major restructuring" of Interco at the Company's next Board meeting on August 8, 1988, and that the recommended restructuring will include "the possible sale of [Interco's] faltering apparel manufacturing group." The Company announced the restructuring plan could include a special dividend to shareholders, a tender offer by the Company for its own shares or open market purchases of its own shares.

41. Defendant Saligman stated that the restructuring was being proposed simply "to narrow the focus of Interco's business lines and improve the price of the company's shares." This statement misleadingly failed to acknowledge the actual takeover-deterrent purpose of the restructuring -- a purpose that has crystallized with defendants' latest actions.

42. Despite the fact that it had been actively repurchasing its shares in the market and that other Interco shareholders are actively buying and selling Interco shares, Interco

failed to disclose material facts as to its proposed restructuring. Interco and the defendant directors omitted to state any details as to the proposed restructuring, or that the proposed restructuring was being created to serve as a deterrent to an unsolicited acquisition such as plaintiff's Offer and that this effect was precisely the impetus for the Company's announcement of the restructuring proposal.

43. Although Interco has still not disclosed what actions it intends to take in connection with its restructuring, its announcement has had its intended effect of causing rampant speculation in the financial markets. Financial analysts immediately placed values on that restructuring plan -- with one analyst placing a value on the restructuring plan of $65 share for the 36.2 million shares of Interco outstanding.

44. In an interview on July 15, it was reported that Interco's Chief Financial Officer, referring to the announcement of the proposed restructuring, stated that Interco "tipped its hand early 'because of the unusual activity surrounding our stock'" -- a concession that Interco's disclosure of its proposed restructuring plan was a blatant attempt at market manipulation.

45. In fact, Interco and the defendant directors have known for months, if not years, that Interco has been widely viewed in the investment community as a potential takeover target. Defendants' actions in announcing the proposed restructur-

ing are plainly in response to the perceived "threat" of an unsolicited tender offer to Interco's shareholders. Their actions on August 8 are in direct response to plaintiff's Revised Merger Proposal.

46. Interco also falsely implied in its August 8 statement that the proposed restructuring is worth more than $70 per share when it stated that the proposed restructuring would "better serve[]" the interests of the Company's shareholders than would the $70 Revised Merger Proposal. In fact, a restructuring of the Company whereby Interco would remain publicly-held and in which control would remain with existing shareholders cannot bring a price greater than $70 per share, and no restructuring could better serve shareholders than a negotiated transaction with plaintiffs -- an option plaintiffs have repeatedly proposed to Interco.

47. These material omissions as to the strengthening of Interco's defensive bulwark have had the effect of artificially inflating the price of Interco's common stock -- thereby benefitting Interco and the director defendants and damaging plaintiff and other Interco shareholders who purchased shares in a market deprived of materially negative information in the possession of Interco and the defendant directors.

C. The Tender Offer

48. Pursuant to the Offer which Cardinal Acquisition has commenced today, Cardinal Acquisition has offered to purchase all of the approximately 36.2 million shares of Interco common stock which it does not now own at a price of $70 per share. The Offer price represents a significant premium above the $47.77 average closing price at which Interco shares traded on the New York Stock Exchange during the 30 trading days prior to the announcement of the Merger Proposal.

49. The Offer is conditioned upon, among other things, the defendant directors' redemption of the Rights Plan or those rights otherwise being invalid or inapplicable to the acquisition of shares pursuant to the Offer and proposed Merger.

50. If the conditions to the Offer are satisfied, Cardinal Acquisition plans to purchase any and all shares of Interco tendered in the Offer at $70 per share, and as soon as practicable thereafter, effect a merger between Interco and Cardinal Acquisition. In the Merger, all remaining Interco shareholders will receive $70 for each of their shares -- the same premium being offered in the Offer.

COUNT I

(For Breach of Fiduciary Duty with Respect to the Restructuring)

51. Plaintiffs repeat each of the foregoing allegations as if fully set forth in this paragraph.

52. Interco's hasty efforts to pursue a restructuring transaction have been undertaken to forestall a possible threat to management's control of Interco. Defendants have already begun to implement that restructuring, as evidenced by their approval of the sale of Interco's apparel manufacturing group. Defendants are seeking to impose their status-preserving restructuring on Interco shareholders without regard to the shareholders' best interests and specifically without regard to the prospect that greater value for shareholders can be obtained through pursuit of a transaction with plaintiffs.

53. Plaintiffs have no adequate remedy at law.

COUNT II

(For Breach of the Fiduciary Duty of Candor)

54. Plaintiffs repeat each of the foregoing allegations as if fully set forth in this paragraph.

55. Interco owes to all its shareholders a duty of candor. Plaintiff City Capital is, and at all relevant times was, a shareholder of Interco.

56. The common law duty of candor is intended to insure that issuers and other fiduciaries not deny their cestuis que trust that information necessary for them to make informed decisions as to the trust, including investment decisions.

57. Interco has made false and misleading statements in connection with the purchase or sale of Interco stock, as alleged above.

58. Plaintiffs have no adequate remedy at law.

COUNT III

(For Breach of the
Fiduciary Duty of Candor)

59. Plaintiffs repeat each of the foregoing allegations as if fully set forth in this paragraph.

60. By rejecting the $70 Revised Merger Proposal and by stating on August 8 that the interests of shareholders would be "better served" by the restructuring plan under consideration, Interco falsely implied that the proposed restructuring will be worth more than $70 per share.

61. No restructuring under which Interco would remain a publicly-held company and in which control would remain with existing shareholders will be worth more than $70 per share.

62. No restructuring could better serve the interests of shareholders than would a negotiated transaction with plaintiffs. Plaintiffs have repeatedly offered to meet with the Interco Board and to consider increasing the price per share to

be paid to all of Interco's shareholders pursuant to plaintiffs' proposals.

63. Accordingly, Interco's statements that the shareholders would be "better served" by the proposed restructuring were false and misleading and omitted to state material facts necessary in order to make that statement, in light of the circumstances in which it was made, not misleading.

64. The effect of Interco's statements on August 8 was to artifically increase the price of Interco's stock by falsely raising shareholder expectations and disparaging plaintiffs' $70 Revised Merger Proposal. Interco's statements on August 8 were made in anticipation of the Offer and plaintiffs were thereby directly injured by those statements.

65. Plaintiffs have no adequate remedy at law.

COUNT IV

(For Breach of Fiduciary Duty with Respect to Redemption of the Rights Plan)

66. Plaintiffs repeat each of the foregoing allegations as if fully set forth in this paragraph.

67. The ostensible purpose of the Amended Rights Plan is to protect Interco's shareholders against unfair acquisition proposals that are for less than all the outstanding shares of the company, are at a price that does not reflect the values inherent in the company, or are "coercive" two-tier offers with cash up front and securities of a lesser value in the back end.

68. Nevertheless, the Amended Rights Plan was intentionally designed by defendants to apply indiscriminately to all acquisition proposals not approved by them, including those which, like plaintiffs' Offer are premium price, all-cash offers for all shares, without any coercive element at all. Indeed, the Rights Plan adopted by defendants stands as an impediment to the unapproved accumulation of even a 15 percent minority position in Interco.

69. Defendants have rejected plaintiffs' Revised Merger Proposal and, by engaging in the conduct described herein, have demonstrated to all the world that they will refuse to negotiate the Offer and refuse to redeem the Rights. Accordingly, absent judicial relief, Interco's shareholders will never have an opportunity to receive a premium price for their shares.

70. Defendants' anticipated refusal to redeem the Rights in the face of the noncoercive, all cash Offer such as plaintiffs', which will afford substantial benefits to Interco's shareholders, has no economic justification, serves no legitimate purpose, and is not reasonable in relation to any threat posed to Interco or its shareholders.

71. Defendants' likely refusal to redeem the Rights also will have the purpose and effect of entrenching them in office and insulating them from shareholder participation, all in breach of their fiduciary duties to Interco's shareholders under Delaware law.

72. Plaintiffs have no adequate remedy at law.

COUNT V

(For Breach of Fiduciary Duty with Respect to the Anti-Takeover Statute)

73. Plaintiffs repeat each of the foregoing allegations as if fully set forth in this paragraph.

74. By virtue of its potential three year prohibition on business combinations, the Anti-Takeover Statute gives Delaware companies such as Interco a powerful defense to unsolicited takeovers. That statute would prohibit a merger or other business combination between City Capital and Interco for a minimum of three years unless the defendants agree in advance to "approve" such business combination or plaintiff's offer. The decision whether to exercise this defense is entirely within the control of the company's incumbent directors, who can opt out of the Statute or approve an unsolicited offer, and thereby exempt it from the Anti-Takeover Statute's three year blackout period.

75. Because the Anti-Takeover Statute stands as a barrier to takeover proposals which may benefit shareholders and can easily be misused by incumbent directors for the purpose of maintaining their control, the incumbent directors have a fiduciary obligation to make a good faith assessment of any takeover proposal and to determine whether they should take action to exempt it from the Anti-Takeover Statute. In discharging this duty, the directors are obligated to consider the best interests of shareholders and to refrain from acting to entrench them-

selves in office -- just as they would be in determining whether to implement any other antitakeover provision.

76. The defendant directors' rejection of the Revised Merger Proposal and history of entrenchment, including the actions described above, leave no doubt that they will utilize the Anti-Takeover Statute as an entrenchment device or take such other action as is necessary to prohibit an acquisition transaction from going forward, even though it is in the best interests of Interco's shareholders.

77. Defendants' refusal to properly consider the Revised Merger Proposal, likely refusal to properly consider the Offer and misuse of the Anti-Takeover Statute in this fashion constitutes a violation of their fiduciary obligations to shareholders under Delaware law.

78. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs respectfully request this Court to enter an Order:

(a) declaring that the individual defendants have breached their fiduciary obligations to Interco's shareholders under Delaware law (i) by refusing to redeem the Rights in response to the Offer; (ii) by undertaking the proposed restructuring and refusing to negotiate with plaintiff with respect to the Offer; (iii) by failing to take such other action as is necessary to exempt the Offer and subsequent Merger from

the prohibitions of the Delaware Statute; and (iv) by disseminating false and misleading statements and omissions in connection with the purchase or sale of Interco stock;

(b) compelling defendants to redeem the Rights;

(c) preliminarily and permanently enjoining the defendants, their employees, agents and all persons acting in their behalf or in concert with them from taking any action with respect to the Rights, except to redeem them, and from adopting any other Rights Plan;

(d) preliminarily and permanently enjoining the defendants, their employees, agents and all persons acting in their behalf or in concert with them from taking any action with respect to the proposed re-structuring, and compelling defendants to negotiate with plaintiff with respect to the Offer and to provide plaintiffs with all information necessary to facilitate presenting shareholders with that transaction which will provide shareholders with the greatest value;

(e) compelling defendants to approve the Offer or take such other action as is necessary to exempt the Offer from the prohibitions of the Anti-Takeover Statute;

(f) requiring that appropriate corrective disclosure be made in order to cure all of the false and misleading statements and omissions made by defendants in connection with plaintiffs' Offer, the proposed restructuring, the Amended Rights Plan and the purchase or sale of Interco stock;

(g) awarding plaintiff its costs and disbursements in this action, including reasonable attorneys' fees; and

(h) granting plaintiff such other and further relief as the Court deems just and proper.

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM

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