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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,)

v.)

C.A. No. 10105

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.)

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Courtroom No. 106
Public Building
Wilmington, Delaware
Wednesday, November 2, 1988
2:14 p.m.

- - -

BEFORE: HON. WILLIAM T. ALLEN, Chancellor.

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2 COURT'S RULING ON DEFENDANTS' APPLICATION
3 FOR CERTIFICATION OF AN INTERLOCUTORY
4 APPEAL, MOTION FOR INJUNCTION PENDING
5 APPEAL AND FOR A STAY PENDING APPEAL

6 - - -

7 APPEARANCES:

8 STEPHEN P. LAMB, ESQ.,
9 PAUL L. REGAN, ESQ.,
10 ROBERT E. ZIMET, ESQ. (New York Bar) and
11 JAY B. KASNER, ESQ. (New York Bar)
12 Skadden, Arps, Slate, Meagher & Flom
13 for the Plaintiffs.

14 SAMUEL A. NOLEN, ESQ., and
15 THOMAS A. BECK, ESQ.

16 Richards, Layton & Finger

17 -and-

18 MICHAEL W. SCHWARTZ, ESQ.,
19 ROBERT A. RAGALLO, ESQ.,
20 THEODORE N. MIRVIS, ESQ.,
21 STEVEN M. BARNA, ESQ., and
22 FREDRIC H. GOLDSTEIN, ESQ. (New York Bar)
23 Wachtell, Lipton, Rosen & Katz
24 for the Defendants.

RULING OF THE COURT

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3 THE COURT: What I intend to do, because
4 there is not a great deal of time, is to make some
5 rulings here, and you can take notes. I will probably,
6 at the end of it, ask counsel to see if they can agree
7 upon an order after these rulings are made.

8 First, with respect to the interlocutory
9 appeal point, the test is set out, of course, in Supreme
10 Court Rule 42. Importantly, it requires that
11 a substantial issue is determined and a legal right
12 established, and then sets forth some criteria that
13 I will get to in a moment.

14 I cannot conclude other than that
15 a substantial issue in the case has been decided.
16 As my opinion indicated, I regarded the relief sought
17 as mandatory relief and, in practical effect, a final
18 relief because of the considerations that we have been
19 talking about here this afternoon.

20 The language of the rule says,
21 "... establishes a legal right." What the opinion
22 does, if affirmed on appeal, is, it establishes
23 a legal duty. I think that rights and duties are
24 correlatives and the rule simply should be read to

1 include "duty" with "right."

2 Then it turns on one of five
3 considerations, the last one being the interests of
4 justice. I don't resort in certifying this, however,
5 to that catch-all category, which I have been required
6 to do once or twice, to my embarrassment, but instead
7 to Rule 41(b)(i), "The question of law is of first
8 instance in this State." As appellants frequently
9 do when they seek an order of this kind, it seems to
10 me that the defendants seek to exaggerate to some extent
11 the novelty of the application of what I take to be
12 reasonably established standards to specific facts.

13 The use of this phrase, "end stage,"
14 probably will cause more difficulty. A colorful phrase
15 causes more difficulty. A longer phrase that describes
16 a point in a process at which, and then goes on for
17 two sentences, would be just as good. I didn't intend
18 to introduce a new concept. It represents a concept,
19 but I don't think it is a new one. I think it's reflected
20 in the Supreme Court's holding in Moran that there
21 may come a time in exercising its responsibilities
22 that a board will be under a legal duty to redeem
23 a pill. I don't think the law heretofore was that
24 there would never come a time. And therefore, to find

1 an instance in which a court finds there is such a time
2 doesn't strike me as being altogether novel.

3 However, I also recognize that we haven't
4 occasioned such a situation heretofore and that in
5 that respect this is a question of first instance.

6 In all events, I'm surely persuaded by
7 Mr. Schwartz' arguments that this is a question that
8 the Supreme Court of Delaware may wish to address and
9 certainly could enlighten those of us who find it
10 necessary to look to the Delaware law from time to
11 time. So I think there is an institutional consideration
12 here that he referred to that I regard as valid.

13 I conclude that this case at this stage
14 does meet the standards for Rule 42 and I will sign
15 an order, if somebody will prepare one. Maybe one
16 has already been prepared.

17 MR. NOLEN: Your Honor, one has actually
18 been prepared.

19 THE COURT: Is there a form in the Supreme
20 Court forms?

21 MR. NOLEN: I don't think there is
22 a specific form for this form of order. I would caution
23 your Honor that, notwithstanding what your Honor said,
24 this form of order refers to the "interests of justice"

1 point as opposed to the issue of first impression point.
2 You may want to change that.

3 THE COURT: It certainly is the easiest
4 one to fall back on.

5 I certainly don't intend to suggest it
6 will not serve the interests of justice.

7 I am going to add language that says,
8 "and may present questions of first instance." But,
9 Mr. Zimet, if they make too much out of this, you can
10 read into the record all that other stuff I said.

11 I will sign this. I will hand it to
12 the Clerk. I'm sorry to say I don't fully understand --
13 does this get filed in our Court and a copy goes to
14 the Supreme Court?

15 MR. NOLEN: Yes.

16 THE COURT: With respect to the preliminary
17 injunction, I thought that the argument was very helpful.
18 I will enter an order that has a paragraph similar
19 to paragraph 1 in the defendants' proposal; that is,
20 that acknowledges or considers the relief to be
21 contingent, so to speak, on the tender offer existing
22 and the price not being reduced.

23 Paragraph 4 is noncontroversial and that
24 will be adopted.

1 With respect to paragraph 2, I think
2 the parties have moved closely together here in that
3 the plaintiffs have affirmed on the record that unless
4 an order is entered enjoining the stock rights plan,
5 or requiring the directors to redeem the stock rights,
6 and that that order is effective, they will not proceed
7 with their offer. In a sense that makes paragraph C
8 redundant and unnecessary. Another way of looking
9 at it is, it makes it less important.

10 In all events, it converts the question
11 into a more conventional one, since it is unquestionably
12 the case that the Court, in an exercise of its equitable
13 power, can stay the effectiveness of its own order,
14 and here it seems to me appropriate to do so, on the
15 condition that Interco -- I am not drafting language
16 here but giving you the concept -- that Interco maintain
17 the status quo with respect to the restructuring and
18 any other transaction outside the ordinary course of
19 business that is significant to the company's balance
20 sheet or income statement, and that some provision
21 be worked out to address the worries of the plaintiff
22 with respect to the timing question. I won't address
23 whether five days or three days or 48 hours, or whatever,
24 is appropriate to quiet fears of the kind that they have.

1 With respect to paragraph C, I will leave
2 it in the order. I think of it as less important than
3 it would be if the plaintiffs had not taken the view
4 reflected in the opinion that the existence of the
5 pill had a preclusive effect on the closing of their
6 offer.

7 With respect to the Revlon point, I had
8 it in mind, as Footnote 14 of the opinion may have
9 suggested. It seems to me that the board ought to
10 be given time to consider, assuming that this opinion
11 is affirmed, ought to be given time to consider whether
12 an auction of the company is in the best interests
13 of the shareholders.

14 It may be that plaintiff might want to
15 negotiate some specific times here. "A reasonable
16 time to determine whether to conduct an auction."
17 I think that the board can be considering that between
18 now and the determination of an appeal and know what
19 its business plan is in the event of an appeal, and
20 therefore it should be able to act reasonably promptly
21 both to announce and effectuate any plan that is novel
22 that arises as a result of the appeal.

23 I won't suggest the time limits, but
24 it seems to me that a relatively short time period

1 that holds the effectiveness of the injunction off
2 for a short period to let the board announce and implement
3 any decision of that kind in the event of an affirmance
4 is appropriate.

5 You all have an appointment with the
6 Supreme Court in a little while. I wouldn't want to
7 cause you to be late. Is there anything that I haven't
8 addressed relative to the form of order?

9 MR. SCHWARTZ: No, your Honor.

10 THE COURT: Mr. Zimet?

11 MR. ZIMET: I don't believe so, your
12 Honor.

13 THE COURT: I'm leaving it to you all
14 to work out some papers that I can sign to effectuate
15 this ruling.

16 The Court will stand in recess.

17 (Recess, 3:36 p.m.)

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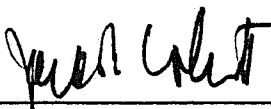
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C E R T I F I C A T E

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3 I, JACK P. WHITE, Official Reporter
4 for the Court of Chancery of the State of Delaware,
5 do hereby certify that the foregoing pages numbered
6 3 through 9 contain a true and correct transcription
7 of the ruling of the Court as stenographically reported
8 by me at the hearing in the above stated cause, before
9 the Chancellor of the State of Delaware, on the date
10 therein indicated.

11 IN WITNESS WHEREOF, I have hereunto set
12 my hand at Wilmington this 3rd day of November 1988.

13
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15 Official Reporter for the
16 Court of Chancery of the
17 State of Delaware

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20 Transcribed by:
21 Ann B. Nolan
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