



ASHBY & GEDDES

ATTORNEYS AND COUNSELLORS AT LAW
500 DELAWARE AVENUE
P. O. BOX 1150
WILMINGTON, DELAWARE 19899

TEL
302-654-1999
FACSIMILE
302-654-2067

February 16, 2010

VIA E-FILING & HAND DELIVERY

The Honorable J. Travis Laster
Court of Chancery
New Castle County Courthouse
500 North King Street
Wilmington, DE 19801

Re: *Kurz v. Holbrook*, C.A. No. 5019-VCL

Dear Vice Chancellor Laster:

We thought that it would be appropriate to update the Court on the status of this matter -- particularly because that status is becoming more complex.

1. **Appeal.** Crown filed a notice of appeal last Tuesday and a motion for expedition on Thursday (like many things, the motion was delayed by the snow). Mr. Kurz/TBE filed an opposition to that motion yesterday. The Supreme Court granted the motion this morning with the last brief being due on March 24, 2010.

2. **New Consents.** Crown delivered new consents to the Company on Thursday. If adopted by the shareholders, they would shrink the size of the board and take other steps at the next annual meeting of stockholders, in keeping with the Court's opinion. They would also adopt a bylaw setting the Company's annual meeting for the third Thursday of March. In their opposition to the motion to expedite the appeal, the Kurz/TBE group appears to assert that the proposal regarding the date of the meeting would violate the status quo order, and thus they might be bringing this issue to the Court. Our short response is that the status quo order applies to the board and the Company, not its shareholders, but if the Kurz/TBE does bring this issue to the Court, we will respond more fully when we see their actual arguments.

3. **The New Board's Actions.** Last Wednesday at a board meeting, the Kurz/TBE group enacted many resolutions and we are still uncertain about what most of them are. We have asked for a copy of the "script" Mr. Kurz was reading from so we can understand the resolutions but so far it appears that we will not get it without bringing a § 220 action. We are hoping that reconsideration will bring a less confrontational response, but we might soon be in the unusual position of filing a director's 220 action on behalf of Mr. Deutschman.

The Honorable J. Travis Laster
February 16, 2010
Page 2

The new board also appointed Mr. Kurz as EMAK's President. At the board meeting Mr. Kurz was clear that he would not have any compensation and any duties would be assigned at some future date by the CEO or the board. We have now been told, however, that the issue of Mr. Kurz's compensation has been delegated to a committee composed solely of TBE nominees. It is not clear whether they intend to tell the rest of the directors what, if anything, that compensation will be. (The responses to our inquiries have been somewhat cryptic). In addition, it appears that the TBE nominees are investigating Mr. Holbrook to find justifications to terminate him for cause. Given the lack of clarity we have not yet brought a TRO motion about the management changes, but we might be compelled to do so in the next several days if communications do not improve.

We have also been informed that another new committee comprised of TBE nominees has voted to switch sides in the California case and have the Company prosecute that case as a plaintiff with Mr. Kirkland's firm representing the company. We are trying to gather facts to determine whether to bring a TRO motion on this situation, given that control of the Company might change again in the near future and it appears that this action might eliminate insurance coverage for these claims.

Finally, we note that Mark Gentile, Esquire has been retained by the new board as Delaware counsel for the Company and we have included him on this letter.

We will keep the Court posted as matters progress.

Respectfully yours,



Stephen E. Jenkins
(Del. I.D. #2152)

SEJ/dlb

cc: Register In Chancery (via e-file)
Kenneth J. Nachbar, Esquire (via e-file)
Joel Friedlander, Esquire (via e-file)
Collins J. Seitz, Jr., Esquire (via e-file)
Mark J. Gentile, Esquire (via e-file)